

No. 12675

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United States  
Court of Appeals  
for the Ninth Circuit.

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M. P. MULLANEY, Commissioner of Taxation,  
Territory of Alaska,

Appellant,

vs.

LUTHER C. HESS and ALASKA JUNEAU  
GOLD MINING COMPANY, a Corporation,

Appellees.

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Transcript of Record

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Appeal from the District Court  
for the Territory of Alaska  
Fourth Division

FILED

NOV 24 1950

PAUL P. O'BRIEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court for the Territory of Alaska,  
Fourth Judicial Division

LUTHER C. HESS,

Plaintiff,

vs.

M. P. MULLANEY, Commissioner of Taxation,  
Territory of Alaska, et al.,

Defendant.

ALASKA JUNEAU GOLD MINING CO., a Cor-  
poration,

Intervenor.

No. 6352

COMPLAINT FOR INJUNCTION AND  
OTHER RELIEF

Plaintiff complains and alleges and prays as follows:

I.

That plaintiff is a resident and inhabitant of the Territory of Alaska, Fourth Judicial Division, residing at Fairbanks, Alaska, and he has been such resident and inhabitant for more than twenty-five years.

II.

That defendant, M. P. Mullaney, is the duly constituted and acting Commissioner of Taxation of the Territory of Alaska, and he has been such Commissioner of Taxation at all times mentioned herein,

and he is charged by law with the duty of collecting taxes for the Territory of Alaska, including such taxes as may be levied on real and personal property, and he resides at Juneau, Alaska, and has deputies and agents in each of the four judicial divisions, including the Fourth Judicial Division, and he is being sued herein on account of acts already committed and which he intends and threatens to perform under color of law in his official capacity as Commissioner of Taxation of the Territory of Alaska in accordance with the provisions of the act of the Alaska Legislature referred to in Paragraph III hereof. That the defendant, City of Fairbanks, is a municipal corporation organized under the laws of Alaska, and it is situated in the Fourth Judicial Division of Alaska; and the Fairbanks School District is an independent school district organized under the laws of the territory, and it [1\*] comprises the City of Fairbanks and certain adjacent territory, and it performs its functions by and through the above-named directors, who are named as defendants herein; and that defendant William Liese is the Tax Assessor for the Fourth Judicial Division, Alaska, appointed pursuant to the provisions of the Alaska Property Tax Act.

### III.

This action arises under the act of the legislature of Alaska passed and approved February 21, 1949, and designated as Chapter 10, Session Laws of Alaska, 1949, and known and cited as the "Alaska Property Tax Act," and the amendment thereto

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\* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

designated Chapter 88, Session Laws of Alaska, 1949.

#### IV.

That the Alaska Property Tax Act hereinabove mentioned purports to levy a tax on all real property and improvements and tangible personal property within the Territory of Alaska, with certain exceptions therein named, at the rate of 1% per annum of the true and full value thereof, excepting that the taxable value of unimproved, unpatented mining claims which are not producing and non-producing patented mining claims is fixed at \$500.00 per each 20 acres or fraction of each such claim regardless of true value; and the tax on boats and vessels engaged in marine service on a commercial basis levied under Section 3 of the Alaska Property Tax Act as amended by Chapter 88 is optional and may be paid on the true and full value or at the rate of \$4.00 per net ton of the vessel's registered tonnage with a minimum tax fixed at \$20.00; and this tax is purported to be levied by Section 3 of the Alaska Property Tax Act for the calendar year 1949 and each calendar year thereafter. [2]

#### V.

That plaintiff is the owner of certain property within the city of Fairbanks, Alaska, consisting of Lot 7 in Block 60 and a cabin thereon, which lot is assessed for tax purposes at \$700.00 and the cabin at \$300.00; and he is the owner of certain real property situated in the Fairbanks School District, consisting

of two patented non-producing mining claims on St. Patrick Creek, being named Discovery Claim and No. 1 Above Discovery, and also of a one-third interest in the Gold Engine Bench Claim of approximately 40 acres, which is non-producing and of other real property in the Fairbanks School District valued at \$5,000.00; and also of certain groups of patented and unpatented mining claims in the Fourth Judicial Division, Territory of Alaska, not included within the City of Fairbanks or within the Fairbanks School District and all valued according to the standard of valuation set up in Section 3 of the Alaska Property Tax Act at \$50,713.46; and is also the owner of certain personal property, consisting of machinery and equipment, tools, etc., in the Fourth Judicial Division of Alaska outside the boundaries of the City of Fairbanks and outside the boundaries of the Fairbanks School District valued at \$7,500.00 according to the standard of valuation set up in Section 3 of the Alaska Property Tax Law.

## VI.

That Section 44 of the Alaska Property Tax Act, Chapter 10 of the Session Laws of Alaska, 1949, provides that the defendant Tax Commissioner shall be the collector of taxes levied under the Alaska Property Tax Act on all property outside the incorporated cities, school districts, and public utility districts in the [3] territory; and he is authorized and empowered to enforce the collection of such taxes levied under that act; and acting under the authority

given him by the act, he has prescribed forms for making tax returns and promulgated and published rules and regulations for the assessment and collection of all taxes imposed under the provisions of said act as amended.

## VII.

That under the provisions of the Alaska Property Tax Act the municipal corporations in the Territory of Alaska are authorized, empowered, and directed to assess, levy, and collect and enforce the collection of the taxes on all property prescribed in Section 3 of the Alaska Property Tax Act within the municipalities, and the manner of assessment, collection, and enforcement of the taxes provided to be levied under the provisions of the Alaska Property Tax Act is that provided by the city ordinances and resolutions of the municipalities with reference to levy, assessment, and collection of municipal taxes; and the Alaska Property Tax Act provides that the portion of the Alaska property tax collected by municipal corporations, including the defendant City of Fairbanks, which is not in excess of the combined municipal taxes authorized by existing law and the territorial tax of 10 mills levied under the Alaska Property Tax Act shall be retained by the cities, including the City of Fairbanks.

## VIII.

That the taxes provided to be collected under the Alaska Property Tax Act in independent school districts outside of town bounds are levied, assessed,

and collected in accordance with the ordinances and resolutions of the directors of the independent [4] school districts, and the Alaska Property Tax Act imposed the duty of levying, assessing, and collecting the taxes in the independent school districts, including the Fairbanks School District, upon the directors of the school district, and the whole thereof may, under the law, be used by the school district for school purposes.

### IX.

That pursuant to the provisions of Section 44, Chapter 10 of the Session Laws of Alaska, 1949, the defendant Tax Commissioner prescribed certain forms for statement of assessable real and personal property under the provisions of the Alaska Property Tax Act, and he delivered certain of those forms to the plaintiff with instructions to make a list of all of plaintiff's real and personal property in the Territory of Alaska outside the independent school districts and incorporated cities and to place a valuation thereon in accordance with the provisions of the Alaska Property Tax Act, and upon receipt of the forms the plaintiff, within the time prescribed by law and the regulations of the defendant Tax Commissioner prepared and filed his returns, which contain a list of all the real and personal property aforesaid, and plaintiff, before filing the returns, inserted thereon the following:

“This return is made without prejudice or waiver of rights to contest the validity of Chapter 10, Session Laws of Alaska, 1949, or any assessment made or tax levied thereunder.”

## X.

That pursuant to the provisions of the Alaska Property Tax Act and the municipal ordinances of the city of Fairbanks, Alaska, the defendant City of Fairbanks assessed, levied and [5] collected from plaintiff the tax of 10 mills on plaintiff's property within the limits of the city of Fairbanks, Alaska, and an additional tax of 10 mills, making a total of 20 mills, all of which is to be used for municipal purposes pursuant to the provisions of the Alaska Property Tax Act.

## XI.

That under the provisions of the Alaska Property Tax Act the defendant Fairbanks School District and the hereinabove named defendants who are directors of the Fairbanks School District levied and assessed the tax of 10 mills on plaintiff's property hereinabove described which is situated within the Fairbanks School District, and the whole of this tax will be collected and retained by the Fairbanks School District for school purposes pursuant to the provisions of the Alaska Property Tax Act.

## XII.

That defendant Tax Commissioner is threatening to levy and collect a tax from plaintiff on the real and personal property described in the returns aforesaid according to the standards of valuation prescribed by the Alaska Property Tax Act, and he is asserting the taxes to be a lien upon the real and personal property of the plaintiff listed, described



and set forth in plaintiff's returns, which lien is a cloud upon the title of plaintiff's real and personal property, and defendant M. P. Mullaney, Tax Commissioner, will, unless enjoined by this court, enforce the collection of the tax on both the real and personal property of the plaintiff, which tax, based on the value set forth in the returns, will be \$580.13 [6]

### XIII.

That all the taxes levied and assessed, including those which plaintiff has already paid the City of Fairbanks and those which the defendants are threatening to collect, including those which are a lien on plaintiff's property and constitute a cloud upon the title thereof, are for the calendar year 1949, and the defendants are threatening to and will, unless enjoined by this court, levy and assess and collect, through the means provided by law, similar taxes on plaintiff's several parcels of property in all future years; and all the taxes paid by plaintiff to the City of Fairbanks under the Alaska Property Tax Act have been paid only because plaintiff has no alternative under the ordinances of the City of Fairbanks, in accordance with which the taxes were collected, and they were paid under duress and for the reason that the laws of the territory and the ordinances of the city make no provision for the payment of those taxes under protest or for enjoining the collection of those already paid for the calendar year 1949, and the same is true of school districts and public utility districts.

## XIV.

That the Alaska Property Tax Act provides for the creation and establishment of a Board of Assessment and Equalization in each judicial division of the Territory of Alaska, which shall consist of three members appointed by the governor, and they are empowered to appoint an appraiser and assessor in each judicial division, and they have appointed an appraiser and assessor in the Fourth Judicial Division of the Territory of Alaska; and the law further provides that the assessor in each judicial division shall prepare an annual assessment roll showing, among other things, the assessed value, quantity or amount of the property of each property owner in the judicial division outside of incorporated towns and school districts and the amount of taxes thereon; and that the assessment roll shall be completed for the year 1949 on or before the first day of September, and that it shall be certified as required by law; but notwithstanding this provision of the law, no assessment rolls have been made for the respective judicial divisions of the territory.

## XV.

Plaintiff alleges that the taxes imposed upon him by the Alaska Property Tax Act and which the defendant is threatening to collect and which are a cloud upon the title of plaintiff's real and personal property are invalid for the following reasons:

1. The act is in violation of the provisions of Section 9 of the Organic Act of Alaska and amendments

thereto in that the levy and assessment thereunder and the taxes imposed thereby are not uniform upon the same class of subjects.

2. That the Alaska Property Tax Act is violative of the Constitution of the United States and the Fifth and Fourteenth Amendments thereto and of the Civil Rights Act (8 USCA 41) and of the Act of Congress of July 30, 1886 (24 Stat. 170).

3. That the territorial tax levied and assessed under the provisions of the Alaska Property Tax Act within incorporated cities, public utility districts, and school districts is levied, assessed, and collected at different times and in a different manner and on different valuations from the tax provided to be levied, assessed, and collected outside of incorporated cities, school districts, and public utility districts.

4. That the rate of taxation within municipalities and [8] outside municipalities and within school districts and outside school districts is different for the reason that in most all taxing units, except that administered by the Territorial Tax Commissioner direct, provision is made for discount for cash, while no provision is made for any discount in the taxing units administered by the Tax Commissioner, and this results in a different rate of tax within the different taxing units, and in most of the municipalities and school districts of the territory provision is made under the law and the ordinances and resolutions of its taxing units that taxes are due and payable on a certain date within the municipality or

independent school district, with the provision that if one half of the tax is paid on that date, the remainder may be deferred for a period of 6 months.

5. That there is no uniformity of assessment and valuation among the four judicial divisions, as the law provides for a separate Board of Assessment and Equalization in each judicial division with no overall or common Board of Assessment or Equalization to equalize values of property between one judicial division and another, and there is no provision for appeal to a central, general or overall board.

6. The portion of the tax provided to be collected by municipalities, school districts and public utility districts is to be collected and disposed of by the several municipalities, school and public utility districts where collected and to be used solely for their own purposes and not for any territorial purpose, so that the tax provided for is a general territorial tax only on that property which is situated outside incorporated cities, school districts and public utility districts, although [9] the property owners and inhabitants of the municipalities, school and public utility districts obtain the same benefit from the taxes provided to be levied outside those districts, as do the inhabitants and property owners who are required to pay the tax outside cities, school districts and public utility districts.

7. That the terms and provisions of the Alaska Property Tax Act as amended are vague, uncertain, indefinite and impossible of reconciliation, and some

of the terms of Chapter 10 and of Chapter 88 of the Session Laws of Alaska, 1949, are inconsistent with each other; and they are in conflict with the ninth subdivision of Sec. 16-1-35 ACLA-1949 as amended by Ch. 38, Session Laws of Alaska, 1949.

8. The dates for assessment, valuation, returns, payment and attachment of liens vary as between the several taxing units created by the act, thereby destroying the uniformity of the tax.

9. There is a different and discriminatory criterion for valuation of mining property and boats as distinguished from other property.

10. There are different and substantial variations as to exemptions between the different types of taxing districts.

11. There is no method provided in the Alaska Property Tax Act nor in any other law of the territory for equalization of assessments as between different municipalities or taxing units or between any of these and outside areas or between the outside areas in the several judicial divisions.

12. There are substantial differences in the personal liability of taxpayers, depending upon the taxing unit in which [10] their property is situated, and there are substantial differences in the penalties and in the charges to which different taxpayers are liable, depending upon whether their property is within a municipality, a school district, a public utility district, or without those districts.

13. There are substantial differences as to the rights of redemption provided for in the lien enforcement provisions applicable to different taxing units.

14. There are inconsistent provisions within the Alaska Property Tax Act itself.

15. There are substantial variations in the exemptions allowed under Section 6 of the act, and particularly with reference to exemptions under Sub-divisions (f), (g) and (h) of the said Section 6.

#### XVI.

Plaintiff is threatened with an immediate, substantial and irreparable injury for which he has no adequate remedy at law, and the provisions of Chapter 10, Session Laws of Alaska, 1949, constitute a cloud on the title of plaintiff's property and subject him to the payment of a tax on both real and personal property with interest thereon for failure to pay and to the danger of a levy upon his personal property for the payment of the tax levied therein and demanded to be paid.

There are no provisions in the Alaska laws which constitute a clear and certain remedy by way of recovery of taxes imposed under the provisions of Chapter 10, Session Laws of Alaska, 1949, because there is no provision for repayment of the taxes thereunder with interest, which may be paid under protest, and if taxes should be paid under protest, plaintiff [11] will be unable to recover them or have them refunded to him by the territory, because at

the present time the Territory of Alaska is insolvent and unable to pay its ordinary expenses of government, and even if such a remedy were provided by law, it would be completely inadequate.

That there is no provision of the Alaska Property Tax Act which permits payment of the territorial tax imposed on property within a municipality or school district under protest and no provision in the law for its recovery in the event the territorial tax act is held to be invalid.

## XVII.

That the granting of injunctive relief herein is also necessary to prevent a multiplicity of suits against defendant Tax Commissioner and the Territory of Alaska to recover taxes imposed by the provisions of Chapter 10, Session Laws of Alaska, 1949, for every property owner in the territory is in the same situation as plaintiff, and if taxes are paid and the law is thereafter held to be invalid, each owner of property will be required to bring a separate action for the recovery of the taxes so paid; and if plaintiff pays taxes levied in the future on his property in the other two taxing units, namely, the City of Fairbanks and the Fairbanks School District, under protest, he will be obliged to allow these taxing units to levy the tax and proceed in court to enforce the lien on plaintiff's property provided by the ordinances and resolutions of the City of Fairbanks and the Fairbanks School District; and the procedure provided for the enforcement of collection of taxes

in each taxing unit is different, and in order to obtain relief on the grounds and for the reasons hereinabove set forth, the plaintiff [12] would be required to file a multiplicity of suits and to follow in court the separate procedures provided for the different taxing units.

Wherefore, plaintiff prays:

1. That process issue against the defendants to answer this Complaint.

2. That after notice and hearing this court grant to plaintiff a Preliminary Injunction restraining the defendants from doing any act or thing for the purpose of collecting from plaintiff the tax imposed by the Alaska Property Tax Act, Chapter 10 of the Session Laws of 1949, as amended by Chapter 88 of the Session Laws of Alaska, 1949, during the pendency of this suit.

3. That the defendants, pending the final hearing in this cause, be enjoined and restrained by Preliminary Injunction from doing any act or thing which would place a cloud upon the title of plaintiff's property hereinabove mentioned and from assessing, levying or collecting or attempting to levy, assess or collect any tax on plaintiff's property under the provisions of the Alaska Property Tax Act.

4. That upon final hearing this court enter a final order and decree permanently enjoining the defendants and each of them from performing any of the acts mentioned hereinabove.

5. That upon final hearing this court enter an



order, adjudging and decreeing Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88 of the Session Laws of Alaska, 1949, to be null and void and of no legal force or effect.

6. That the plaintiff be granted such other and further relief as the court deems meet. [13]

/s/ LUTHER C. HESS,  
Plaintiff.

/s/ H. L. FAULKNER,  
MEDLEY & HAUGLAND,

/s/ CHAS. J. CLASBY,  
Attorneys for Plaintiff.

State of Washington,  
County of King—ss.

I, the undersigned, Luther C. Hess, being first duly sworn, depose and say that I am the plaintiff hereinabove named, that I have read the foregoing Complaint and know its contents, and that the facts stated therein are true and correct as I verily believe.

/s/ LUTHER C. HESS.

Subscribed and sworn to before me this 26th day of November, 1949.

[Seal] /s/ EDWARD F. MEDLEY,  
Notary Public and for the State of Washington,  
County of King. Residing at Seattle.

My commission expires 9/18/51.

[Endorsed]: Filed December 2, 1949. [14]

[Title of District Court and Cause.]

## COMPLAINT IN INTERVENTION

Comes now the above-named intervenor and petitioner, by leave of court, and represents, complains and alleges as follows:

### I.

That the above-entitled cause is pending in the above-entitled court, and it is brought for the purpose of testing the validity of the Alaska Property Tax Act, Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88 of the Session Laws of Alaska, 1949, and plaintiff in his complaint alleges the act is unconstitutional and void.

### II.

That the above-named intervenor is a corporation organized and existing under the laws of West Virginia, and it has complied with all the laws of Alaska relating to corporations doing business in the Territory of Alaska. It has paid all corporation license taxes due the Territory, filed all reports required by law, and is doing business in Alaska; and it was engaged in lode mining in the Territory of Alaska from 1915 continuously until 1944 when economic conditions forced it to cease its mining operations temporarily.

## III.

That the intervenor is interested in the above-entitled cause and in the outcome thereof for the reasons hereinafter set forth, and intervenor's complaint sets up questions of law and fact in common with plaintiff's claim. Intervenor's intervention will not delay or prejudice the adjudication of the rights of plaintiff or defendants or either of them, but it will enable all [15] parties to more fully present to the court all the issues of law involved in this cause.

## IV.

That intervenor is the owner of both real and personal property in the Territory of Alaska, First Judicial Division, and in five different taxing units thereof, as such are defined and designated in Chapter 10, Session Laws of Alaska, 1949; namely, in the City of Juneau, the Juneau Independent School District, the Douglas Independent School District, the City of Douglas, and in territory not included in any municipality or school district or other taxing unit. That the property consists of patented and unpatented mining claims, milling plant, buildings, foundry, machine shop and carpenter shop, wharves, power plants, transmission lines, dams, oil tanks, machinery, supplies, equipment, mill sites, and other real property in addition to the mining claims, all described and valued in the different taxing records of the five separate taxing units as follows:

Taxing Unit	Description of Property	Assessment	Net Tax
City of Douglas	Transmission lines .....	\$ 2,500	\$ 35.75
Douglas Independent School District	19 mining claims .....	9,500	
	Houses .....	3,370	
	240 power plant .....	100,000	
	Foundry, etc. ....	10,000	
		<hr/>	
		\$ 122,870	1,204.13
City of Juneau	Cars and trucks .....	1,850	36.26
	Pole lines .....	5,600	
	Wharf and equipment .....	10,000	
	Warehouse and shed .....	3,000	
	Dormitory .....	2,000	
	Supplies .....	40,000	1,187.76
	Lot 6, Bl. 119 .....	500	9.80
	Lot 5, Bl. 27 .....	800	
	House .....	10,846	
	Personal .....	1,000	247.86
	Lot 7, Bl. 5 .....	5,000	98.00
		<hr/>	
		\$ 80,596	\$1,579.68
Juneau Independent School District	Land .....	49,000	
	Buildings, Transmission lines	109,000	
	Perseverance mining claims	11,500	
	Salmon Creek plant .....	1,518,220	
	Nugget Creek plant .....	25,000	
	Sheep Creek plant .....	295,430	
	9 claims (Sheep Creek).....	900	
	Building .....	570	19,694.28
		<hr/>	
		\$2,009,620	

Taxing Unit	Description of Property	Assessment	Net Tax
	Boats and watercraft .....		291.00
Territory of Alaska	Annex plant and equipment	50,000	
	Annex Creek line .....	4,000	
	Annex residences (3) .....	3,000	
		\$ 57,000	
	Personal exemption .....	200	
	Return filed for .....	\$ 56,800	
Wrangell District:			
Red Cliff Lode 0.603 acres			
16 patented claims 218.081 acres			
Juneau District:			
10 claims patented 180.014 acres			
Total acres 398,698			
Assessment \$10,000			
Return filed for			

That the taxes levied on all the property of intervenor within the City of Douglas, the Douglas Independent School District, the City of Juneau, and the Juneau Independent School District have been paid in full for the current year, and that the tax rate in the City of Douglas is 15 mills with 2% discount for cash payment in full, and that the tax rate in the City of Juneau is 20 mills less 2% discount for payment in cash in full, and that the tax rate in the Juneau Independent School District is 10 mills less 2% for payment in full in cash. The ordinances of the City of Douglas and the City of Juneau and the resolutions of the Juneau and Douglas Independent School Districts provide [17] that taxes for the current year may be paid in two equal installments at the full rate or in cash at the discount hereinabove mentioned.

## V.

Intervenor re-alleges and adopts by reference as a part of this complaint in intervention all the allegations contained in Paragraphs II, III, IV, VI, VII, VIII, and XIV of plaintiff's complaint and alleges that the Board of Assessment and Equalization was created and established for the First Judicial Division, Territory of Alaska, the same as that created and established for the Fourth Judicial Division and that in the First Judicial Division the Board has appointed an appraiser and assessor.

## VI.

Intervenor re-alleges and adopts by reference as a part of this complaint in intervention the allegations of Paragraph IX of plaintiff's complaint and alleges that the same procedure was followed with reference to plaintiff in intervention's real and personal property in the First Judicial Division as that described in Paragraph IX of plaintiff's complaint with reference to his property in the Fourth Judicial Division and that, in making the returns to the Tax Assessor in the First Judicial Division, the plaintiff in intervention inserted thereon a statement to the effect that the return was made without prejudice or waiver of the rights of plaintiff in intervention to contest the validity of Chapter 10, Session Laws of Alaska, 1949, or any assessment made or tax levied thereunder.

## VII.

That pursuant to the provisions of the Alaska Property Tax Act and the municipal ordinances of the City of Juneau, [18] Alaska, the City of Juneau assessed, levied and collected from plaintiff in intervention the tax of 10 mills on the property of plaintiff in intervention within the limits of the City of Juneau, Alaska, and an additional tax of 10 mills, making a total of 20 mills, all of which is to be used for municipal purposes pursuant to the provisions of the Alaska Property Tax Act, and the discounts allowed for the payment of this total tax of 20 mills in cash as hereinabove alleged were allowed upon the whole 20-mill levy, and the City of Douglas, pursuant to the provisions of the Alaska Property Tax Act and the municipal ordinances of that city, assessed, levied and collected from plaintiff in intervention a tax of 10 mills on the property of plaintiff in intervention within the corporate limits of the City of Douglas and an additional 5 mills, making a total of 15 mills, all of which is to be used for municipal purposes by the City of Douglas pursuant to the provisions of the Alaska Property Tax Act, and the discounts for payment in full were allowed upon the entire tax of 15 mills.

## VIII.

That under the provisions of the Alaska Property Tax Act the Juneau Independent School District and the Douglas Independent School District levied and assessed the tax of 10 mills on all real and personal property of plaintiff in intervention herein-

above described which is situated within the Juneau and Douglas Independent School Districts, and the whole of this tax has been collected and retained by the Douglas and Juneau Independent School Districts for school purposes pursuant to the provisions of the Alaska Property Tax Act, and the discounts for payment in cash were allowed as hereinabove alleged. [19]

### IX.

That defendant Tax Commissioner is threatening to levy and collect a tax from plaintiff in intervention on the real and personal property of plaintiff in intervention within the Territory of Alaska outside the municipalities and independent school districts hereinabove mentioned and which real and personal property is described in the aforesaid returns, according to the standards of valuation prescribed by the Alaska Property Tax Act, and he is asserting the taxes to be a lien upon the real and personal property of the plaintiff in intervention, which property is listed, described and set forth in plaintiff in intervention's returns, which lien is a cloud upon the title of the real and personal property of plaintiff in intervention; and defendant M. P. Mullaney, Tax Commissioner, will, unless enjoined by this court, enforce the collection of the tax on both the real and personal property of plaintiff in intervention, which tax, based on the value set forth in the returns of plaintiff in intervention, will be \$668.00.



## X.

That all the taxes levied and assessed, including those which plaintiff in intervention has already paid the Cities of Juneau and Douglas and the Juneau and Douglas Independent School Districts and those which the defendant Tax Commissioner is threatening to collect, including those which are a lien on the property of plaintiff in intervention and constitute a cloud upon the title thereof, are for the calendar year 1949, and defendant M. P. Mullaney, Commissioner of Taxation for the Territory of Alaska, is threatening to and will, unless enjoined by this court, levy and assess and collect, through the means [20] provided by law and otherwise, similar taxes on valuations to be hereafter determined on all the property of plaintiff in intervention in all future years; and all the taxes paid by plaintiff in intervention to the Cities of Juneau and Douglas and to the Juneau and Douglas Independent School Districts, under the Alaska Property Tax Act, have been paid only because plaintiff in intervention had no alternative under the ordinances of the Cities of Juneau and Douglas and the resolutions and ordinances of the Juneau and Douglas Independent School Districts, in accordance with which these taxes were collected, and they were paid under duress and for the reason that the laws of the Territory and the ordinances of the Cities of Juneau and Douglas and the ordinances and resolutions of the Juneau and Douglas Independent School Districts make no provision for the payment of those taxes under protest or for enjoining the collection

of those already paid for the calendar year 1949, and no provision is made by law or the ordinances for the return of taxes levied, assessed and paid to municipalities and independent school districts in the Territory of Alaska.

## XI.

Plaintiff in intervention re-alleges and adopts by reference, as a part of this complaint in intervention, all of the allegations contained in Paragraph XV of plaintiff's complaint filed herein; and alleges that the taxes imposed upon plaintiff in intervention by the Alaska Property Tax Act and which the defendant M. P. Mullaney, Commissioner of Taxation, is threatening to collect and which are a cloud upon the title of the real and personal property of plaintiff in intervention are invalid for the reasons set forth in Paragraph XV of [21] plaintiff's complaint, which is adopted as a part of this complaint in intervention.

## XII.

Plaintiff in intervention re-alleges all the allegations contained in Paragraph XVI of plaintiff's complaint and adopts the same by reference as though fully set forth herein and alleges plaintiff in intervention is in the same situation and threatened with the same injuries as alleged by plaintiff in Paragraph XVI of his complaint with reference to himself, and that all of the allegations of Paragraph XVI of plaintiff's complaint apply with equal force to plaintiff in intervention.

## XIII.

That the granting of injunctive relief herein is also necessary to prevent a multiplicity of suits against defendant Tax Commissioner and the Territory of Alaska and the different taxing units thereof to recover taxes imposed by the provisions of Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, for every property owner in the Territory is in the same situation as plaintiff; and if taxes are paid and the law is thereafter held to be invalid, each owner of property will be required to bring a separate action for the recovery of taxes so paid; and if plaintiff pays taxes levied in the future on its property within the City of Juneau and the City of Douglas, Alaska, and the Juneau and Douglas Independent School Districts, under protest, it will be obliged to allow these taxing units to levy the tax and proceed in court to enforce lien on the property of plaintiff in intervention, as provided by the ordinances and resolutions of the Cities of Juneau and Douglas and the Juneau and [22] Douglas Independent School Districts; and the procedure provided for the enforcement or collection of taxes in each taxing unit is different, the rate is different, and in order to obtain relief on the grounds and for the reasons hereinabove set forth, plaintiff in intervention would be required to file a multiplicity of suits and to follow in court the separate procedures provided for the different taxing units.

Wherefore, intervenor prays as follows:

1. That it may be permitted to intervene in this action under the provisions of the laws of Alaska and the rules of civil procedure, and that it may present to the court in this action the facts and evidence in support of this complaint in intervention and introduce such evidence and file such briefs and make such arguments as are proper and in support of the questions of fact hereinabove alleged and in support of the questions of law and fact which are common to plaintiff and intervenor and proceed as though plaintiff in intervention were a party plaintiff in the above-entitled cause.

2. That the prayer of plaintiff's complaint be granted.

3. That the defendant M. P. Mullaney, Commissioner of taxation of the Territory of Alaska, pending the final hearing in this cause, be enjoined and restrained by preliminary injunction from doing any act or thing which would place a cloud upon the title of the property of plaintiff in intervention hereinabove described and from assessing, levying or collecting, or attempting to levy, assess or collect, any tax on the property of plaintiff within the Territory of Alaska under the provisions of the Alaska Property Tax Act.

4. That upon final hearing the court enter a final order [23] and decree permanently enjoining the defendant M. P. Mullaney, Commissioner of Taxation, and all of his deputies, assistants, and

employees, and each of them, from performing any of the acts mentioned hereinabove.

5. That upon final hearing this court enter an order adjudging and decreeing Chapter 10 of the Session Laws of Alaska, 1949, as amended by Chapter 88 of the Session Laws of Alaska, 1949, to be null and void and of no legal force or effect.

6. That plaintiff in intervention be granted such other and further relief as the court deems meet.

ALASKA JUNEAU GOLD  
MINING COMPANY,  
A Corporation,

By /s/ E. G. NELSON,  
Plaintiff in Intervention.

FAULKNER, BANFIELD &  
BOOCHEVER,

By /s/ H. L. FAULKNER,  
Attorneys for Intervenor.

Territory of Alaska,  
First Judicial Division—ss.

I, the undersigned, being first duly sworn, depose and say that I am the Assistant Manager of the above-named Alaska Juneau Gold Mining Company, a corporation, and at present in charge of all of its property and business in the Territory of Alaska, and I am authorized to make this verification; that I have read the foregoing complaint in intervention, and that the facts stated therein are true and correct as I verily believe.

/s/ E. G. NELSON.

Subscribed and sworn to before me this 9th day  
of [24] January, 1950.

[Seal] /s/ N. C. BANFIELD,  
Notary Public for Alaska.

My Commission expires Aug. 21, 1950.

Receipt of Copy acknowledged.

[Endorsed:] Filed January 13, 1950. [25]

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[Title of District Court and Cause.]

#### ORDER PERMITTING INTERVENTION

Upon reading and filing the motion of the above-named intervenor, and also upon inspection of the complaint in intervention attached to the motion of plaintiff in intervention,

It Is Hereby Ordered that the above-named Alaska Juneau Gold Mining Company, a corporation, which is named as intervenor, be and it is hereby permitted to intervene in the above-entitled cause and to file herein its complaint in intervention and such motions as it deems necessary and advisable and to proceed in this cause as intervenor, pursuant to the provisions of law and the rules of civil procedure applicable.

Done in open court this 13th day of January, 1950.

/s/ HARRY E. PRATT,  
Judge.

Entered Jan. 13, 1950.

[Endorsed]: Filed January 13, 1950. [26]

[Title of District Court and Cause.]

AFFIDAVIT OF DEFENDANT M. P. MULLANEY, COMMISSIONER OF TAXATION

United States of America,  
Territory of Alaska—ss.

I, M. P. Mullaney, being first duly sworn, depose and say:

(1) That I am the Commissioner of Taxation for the Territory of Alaska and as such am charged by law with the duty of enforcing the tax laws of the Territory, and I have been made collector of the taxes levied under Ch. 10 S.L.A. 1949.

(2) That since April 28, 1949, at which time the District Court for the First Judicial Division at Juneau, Alaska, issued a preliminary injunction in the case of Alaska Steamship Company v. Mullaney restraining me from collecting amounts withheld by the plaintiff in that case from the wages and salaries of its employees as a tax under the Alaska Net Income Tax Act, which injunction as modified on July 9, 1949, so as to include only the amounts withheld from wages and salary of plaintiff's sea-going personnel is still in effect as of the date of the signing of this affidavit, it has been my experience as Commissioner of Taxation for the Territory of Alaska that the existence of said preliminary injunction has had the effect of causing many taxpayers and withholding agents under the Alaska Income Tax Act to refuse to pay to the Territory

amounts withheld under the said Act. According to the records of my office, approximately 40 companies and associations that are withholding agents under the said Act have withheld amounts from the wages and salaries of their [98] employees totalling approximately \$145,000 for the first three quarters of 1949, have made returns to me as Tax Commissioner of this amount, but have refused to remit said sums to the Territory of Alaska. Each of said 40 withholding agents in making the returns as aforesaid have given as reasons for not remitting the amounts withheld that the Alaska Income Tax Act had been challenged by other withholding agents and that injunctions had been issued by federal courts in the State of Washington and the Territory of Alaska. None of the said withholding agents have obtained an injunction restraining the collection from them of the amounts withheld as aforesaid.

Therefore, based upon the foregoing facts, it is my opinion that the issuance of a preliminary injunction in the above-entitled action will have the effect of causing many taxpayers other than the plaintiff to refuse to pay property taxes levied under Ch. 10 S.L.A. 1949, which will result in financial distress for the Territory of Alaska and will cause unnecessary delay in the payment of the Territory's obligations.

/s/ M. P. MULLANEY.

Subscribed and sworn to before me this 24th day of January, 1950.



[Seal]     /s/ MARTHA WENDLING,  
                    Notary Public for Alaska.

My Commission expires: 11-1-50.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 27, 1950. [99]

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[Title of District Court and Cause.]

### PRELIMINARY INJUNCTION

This matter, having come on before the Court upon the complaint of plaintiff and the complaint in intervention of the intervenor above named and upon affidavits in support of the complaints, and upon argument of counsel of the respective parties, all on the 28th day of January, 1950, and the Court having made and filed herein its Findings of Fact and Conclusions of Law; now on application of plaintiff and intervenor and based upon the Findings and Conclusions,

It Is Hereby Ordered that the defendant M. P. Mullaney, Commissioner of Taxation for the Territory of Alaska, and his agents, officers and employees are hereby enjoined and restrained, during the pendency of the above-entitled cause and until final determination thereof by the Court, from collecting from plaintiff or from the intervenor the tax imposed by the Alaska Property Tax Act, Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, upon

property owned by them in the Territory outside of any municipality, school district or public utility district; and from attempting to make collection thereof and from applying or attempting to apply the provisions of Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, to the plaintiff or to the intervenor.

It Is Further Ordered that this preliminary injunction shall become effective and be in full force and effect during the pendency of the above-entitled cause and until final determination thereof, upon plaintiff's filing herein his bond [36] with sufficient sureties to the defendant for the benefit of whom it may concern in the sum of \$1,000.00 to be approved by the Court or the clerk thereof, and conditioned to pay to the defendant, M. P. Mullaney, Commissioner of Taxation, for the benefit of whom it may concern all damages which he may sustain if this preliminary injunction is wrongfully issued or issued without sufficient cause and upon the further condition that the intervenor furnish a similar bond in the penal sum of \$1,000.00 conditioned in like manner.

This Preliminary Injunction is issued upon the Findings and Conclusions heretofore filed herein by the Court and for the reason that it appears from the complaints of plaintiff and intervenor that serious constitutional questions arise on the pleadings in this cause which cannot be determined until final hearing, and that pending the final hearing the plaintiff and intervenor are threatened with the

application to them of the provisions of Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and that plaintiff and intervenor have no adequate remedy at law pending the final determination of this cause.

Done in open Court this 30th day of January, 1950.

/s/ HARRY E. PRATT,  
Judge.

Entered Jan. 30, 1950.

[Endorsed]: Filed January 30, 1950. [37]

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[Title of District Court and Cause.]

STIPULATION RE INTRODUCTION OF  
EVIDENCE AT TRIAL

It Is Hereby Stipulated and Agreed by and between Faulkner, Banfield & Boochever, Collins & Clasby, and Edward F. Medley, attorneys for plaintiff and intervener, and J. Gerald Williams, Attorney General of Alaska, attorney for defendants, that upon the trial of the above-entitled cause, there may be introduced in evidence by either side, all the affidavits, certified copies of ordinances, resolutions, minutes of meeting and other material which was used at the hearing on the application for preliminary injunction, with the same force and effect as though the matters contained in these documents were presented by witnesses in open court, and that all affidavits, certified copies and other

documents introduced by both sides on the application for the preliminary injunction, may be considered by the Court at the trial of the above-entitled cause, including affidavits of Luther C. Hess, Mrs. Daniel B. Livie, C. L. Popejoy, Celia E. Wellington, A. J. Balog, E. A. Tonseth, Frank Conway, and M. P. Mullaney; certified copy of Ordinance No. 329 of the City of Juneau; certified copy of Ordinance No. 2 of Juneau Independent School District; certified copy of extract of Minutes of Special Meeting of Board of Directors of Juneau Independent School District held August 19, 1949, certified copy of Ordinance No. 2 of Douglas Independent School District; certified copy of extract from Minutes of Meeting of Board of Directors of Douglas Independent School District held October 5, 1949; certified copy of Ordinance No. 9 of the City of Douglas, Alaska; certified copy of extract of Minutes of Meeting of the Douglas City Council held September 12, 1949; certified copy of Ordinance No. 384, City of Fairbanks, Alaska; certified copy of Resolution of Common Council [39] of the City of Fairbanks, held September 26, 1949; certified copy of extract of Minutes of Meeting of Fairbanks City Council dated September 27, 1949; certified copy of Resolution of Common Council of the City of Fairbanks dated October 10, 1949; certified copy of Resolution of Directors of Fairbanks School District dated October 10, 1947; certified copy of Resolution of Fairbanks School District dated August 18, 1949; and received with the same force and

effect as though presented by testimony of witnesses in open court, subject to all objections which may be interposed as to competency, relevancy and materiality.

It Is Further Stipulated that any further evidence deemed necessary by either side may also be presented at the time of the trial of the above-entitled cause, in the manner prescribed by law and the rules of the Court.

Dated at Juneau, Alaska, the 31st day of January, 1950.

/s/ H. L. FAULKNER,

/s/ CHAS. J. CLASBY,

/s/ EDWARD F. MEDLEY,  
Attorneys for Plaintiff  
and Intervener.

/s/ J. GERALD WILLIAMS,  
Attorney for Defendant,  
M. P. Mullaney.

/s/ MIKE STEPOVICH,  
Attorney for City of Fairbanks, Alaska, a Municipal  
Corporation.

/s/ MAURICE T. JOHNSON,  
Attorney for Defendant Fairbanks School District,  
an Independent School District, and L. F. Joy,  
Frank Conway, A. F. Coble and Frank P. De-  
Wree, Directors of Fairbanks School District,  
an Independent School District Corporation.

[Title of District Court and Cause.]

AMENDED ANSWER OF DEFENDANT M. P.  
MULLANEY TO PLAINTIFF'S COMPLAINT

Defendant M. P. Mullaney, by his attorneys, after leave of court first had and obtained, files this his amended answer to the plaintiff's complaint on file herein, answering as follows, to wit:

First Defense

(1) Answering Paragraph I of the Complaint, defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

(2) Answering Paragraph II of the Complaint, defendant admits the allegations contained therein.

(3) Answering Paragraph III of the Complaint, defendant admits the allegations contained therein.

(4) Answering Paragraph IV of the Complaint, defendant admits all material allegations contained therein with the exception of the allegation to the effect that the taxable value of non-producing patented mining claims is fixed at \$500.00 per each 20 acres or fraction of each such claim. Defendant denies said allegation for the reason that the Alaska Property Tax Act provides that the assessed value of only those non-producing patented mining claims upon which the improvements originally required for patent have become useless through deterioration, removal or otherwise is to be fixed at \$500.00 per each 20 acres or fraction of each such claim.

(5) Answering Paragraph V of the Complaint, defendant [27] alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

(6) Answering Paragraph VI of the Complaint, defendant admits that Section 44 of the Alaska Property Tax Act, Chapter 10 of the Session Laws of Alaska, 1949, provides that the defendant shall be the collector of taxes levied under the Alaska Property Tax Act, but defendant denies the qualification placed upon said Section 44 by plaintiff in said Paragraph VI of his Complaint and which is contained in the following words, to wit: "on all property outside the incorporated cities, school districts, and public utility districts in the Territory." Defendant admits the remaining material allegations contained in said Paragraph VI.

(7) Answering Paragraph VII of the Complaint, defendant admits that under the provisions of the Alaska Property Tax Act, the municipal corporations in the Territory of Alaska are authorized to assess, collect and enforce the taxes on all property described in Section 3 of the Alaska Property Tax Act within municipalities, and that the assessment, collection and enforcement of said taxes shall be in the manner prescribed by the property tax law of the municipality; but defendant denies each and every other material allegation contained in said Paragraph VII.

(8) Answering Paragraph VIII of the Complaint, defendant admits all the material allegations contained therein.

(9) Answering Paragraph IX of the Complaint, defendant admits all the material allegations contained therein.

(10) Answering Paragraph X of the Complaint, defendant [28] alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

(11) Answering Paragraph XI of the Complaint, defendant alleges that he without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

(12) Answering Paragraph XII of the Complaint, defendant admits that he intends to collect a tax from plaintiff on the real and personal property described in the returns aforesaid according to the standards of valuation prescribed by the Alaska Property Tax Act, that he will enforce the collection of said tax and that said tax, based on the value set forth in the returns, amounts to \$580.13; but defendant denies each and every other material allegation contained in said Paragraph XII.

(13) Answering Paragraph XIII of the Complaint, defendant admits that the taxes which have been levied and assessed and which defendant intends to collect from plaintiff are for the calendar year 1949; but defendant denies each and every other material allegation contained in said Paragraph XIII.



(14) Answering Paragraph XIV of the Complaint, defendant admits all material allegations contained therein with the exception of the allegation that "no assessment rolls have been made for the respective judicial divisions of the Territory," which allegation defendant denies.

(15) Answering Paragraph XV of the Complaint, defendant denies each and every material allegation contained therein.

(16) Answering Paragraph XVI of the Complaint, defendant denies each and every material allegation contained therein. [29]

(17) Answering Paragraph XVII of the Complaint, defendant denies each and every material allegation contained therein.

### Second Defense

For a second and separate defense, defendant alleges that the classification contained in Ch. 10 S.L.A. 1949 between (a) property within incorporated cities and towns, incorporated school districts, and independent school districts, and (b) property outside of such areas, is reasonable and valid and does not violate standards of uniformity and equality for the reason that under territorial laws the public schools within areas designated above as (a) receive only approximately two-thirds support from territorial funds, while the schools in areas designated above as (b) receive 100% support from territorial funds.

Wherefore, defendant M. P. Mullaney, having

fully answered the complaint of plaintiff filed herein, prays for a judgment and decree declaring Ch. 10 S.L.A. 1949 to be valid in its entirety, and for an order dismissing said complaint.

/s/ J. GERALD WILLIAMS,  
Attorney General of Alaska.

/s/ JOHN H. DIMOND,  
Assistant Attorney General, Attorneys for Defendant,  
M. P. Mullaney.

United States of America,  
Territory of Alaska—ss.

John H. Dimond, being first duly sworn on oath, deposes and says: that I am one of the attorneys for the defendant M. P. Mullaney in the above-entitled action, and make this affidavit of verification for and on behalf of said defendant [30] for the reason that he is not now at Juneau, Alaska, nor within 100 miles thereof, the place where this affidavit is made; that I have read the foregoing Amended Answer, know the contents thereof and that the same is true as I verily believe.

/s/ JOHN H. DIMOND.

Subscribed and sworn to before me this 3rd day of May, 1950.

[Seal] /s/ MARTHA WENDLING,  
Notary Public for Alaska.

My Commission expires November 1, 1950.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 8, 1950. [31]

[Title of District Court and Cause.]

AMENDED ANSWER OF DEFENDANT M. P.  
MULLANEY TO COMPLAINT IN INTER-  
VENTION

Defendant M. P. Mullaney, by his attorneys, after leave of court first had and obtained, files this his amended answer to the complaint in intervention on file herein, answering as follows, to wit:

First Defense

(1) Answering Paragraph I of the Complaint in Intervention, defendant admits the allegations contained therein.

(2) Answering Paragraph II of the Complaint in Intervention, defendant admits all material allegations contained therein.

(3) Answering Paragraph III of the Complaint in Intervention, defendant admits all material allegations contained therein.

(4) Answering Paragraph IV of the Complaint in Intervention, defendant admits all material allegations contained therein with the exception of the allegation that the tax rate in the Juneau Independent School District is 7 mills, and defendant alleges that the tax rate in said district is 10 mills.

(5) Answering Paragraph V of the Complaint in Intervention, defendant re-alleges and adopts by reference as part of this amended answer, all of Paragraphs (2), (3), (4), (6), (7), (8) and (14)

of defendant's amended answer to the complaint of plaintiff Luther C. Hess on file herein. Defendant admits the allegation that the Board of Assessment and Equalization was created and established for the First Judicial [32] Division, Territory of Alaska, the same as that created and established for Judicial Division the Board has appointed an appraiser and assessor.

(6) Answering Paragraph VI of the Complaint in Intervention, defendant admits all the material allegations contained therein.

(7) Answering Paragraph VII of the Complaint in Intervention, defendant admits all the material allegations contained therein.

(8) Answering Paragraph VIII of the Complaint in Intervention, defendant admits all material allegations contained therein with the exception of the allegation that the whole of the tax of 10 mills collected by the Juneau Independent School District was retained by it, and defendant alleges that a portion of said tax was paid to the Commissioner of Taxation for the Territory of Alaska.

(9) Answering Paragraph IX of the Complaint in Intervention, defendant admits that he intends to collect a tax from plaintiff in intervention on its real and personal property within the Territory of Alaska outside the municipalities and independent school districts and which real and personal property is described in the returns aforesaid, ac-

ording to the standards of valuation prescribed by the Alaska Property Tax Act, that he will enforce the collection of said tax and that said tax, based on the values set forth in said returns, amounts to \$668.00; but defendant denies each and every other material allegation contained in said Paragraph IX.

(10) Answering Paragraph X of the Complaint in [33] Intervention, defendant admits that the taxes which have been levied and assessed and which defendant intends to collect from plaintiff in intervention are for the calendar year 1949; but defendant denies each and every other material allegation contained in said Paragraph X.

(11) Answering Paragraph XI of the Complaint in Intervention, defendant denies each and every material allegation contained therein.

(12) Answering Paragraph XII of the Complaint in Intervention, defendant denies each and every material allegation contained therein.

(13) Answering Paragraph XIII of the Complaint in Intervention, defendant denies each and every material allegation contained therein.

### Second Defense

For a second and separate defense, defendant alleges that the classification contained in Ch. 10 S.L.A. 1949 between (a) property within incorporated cities and towns, incorporated school districts, and independent school districts, and (b) property outside of such areas, is reasonable and

valid and does not violate standards of uniformity and equality for the reason that under territorial laws the public schools within areas designated above as (a) receive only approximately two-thirds support from territorial funds, while the schools in areas designated above as (b) receive 100% support from territorial funds.

Wherefore, defendant M. P. Mullaney, having fully answered the complaint in intervention filed herein, prays for a judgment and decree declaring Ch. 10 S.L.A. 1949 to be valid in [34] its entirety, and for an order dismissing said complaint in intervention.

/s/ J. GERALD WILLIAMS,  
Attorney General of Alaska.

/s/ JOHN H. DIMOND,  
Assistant Attorney General, Attorneys for Defendant, M. P. Mullaney.

United States of America,  
Territory of Alaska—ss.

John H. Dimond, being first duly sworn on oath, deposes and says; that I am one of the attorneys for the defendant M. P. Mullaney in the above-entitled action, and make this affidavit of verification for and on behalf of said defendant for the reason that he is not now at Juneau, Alaska, nor within 100 miles thereof, the place where this affidavit is made; that I have read the foregoing Amended Answer,

know the contents thereof and that the same is true as I verily believe.

/s/ JOHN H. DIMOND.

Subscribed and sworn to before me this 3rd day of May, 1950.

[Seal] /s/ MARTHA WENDLING,  
Notary Public for Alaska.

My Commission expires November 1, 1950.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 8, 1950. [35]

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In the District Court for the Territory of Alaska,  
Fourth Judicial Division  
No. 6352

LUTHER C. HESS,

Plaintiff,

vs.

M. P. MULLANEY, Commissioner of Taxation,  
Territory of Alaska, et al.,

Defendants.

ALASKA JUNEAU GOLD MINING CO., a Cor-  
poration,

Intervenor.

H. L. FAULKNER,

Of Juneau, Alaska,

Attorney for Plaintiff.

MEDLEY & HAUGLAND,

1011 American Bldg.,

Seattle, Washington,

Attorneys for Plaintiff.

COLLINS & CLASBY,

Of Fairbanks, Alaska,

Attorneys for Plaintiff.

FAULKNER BANFIELD & BOOCHEVER,

Of Juneau, Alaska,

Attorneys for Intervenor.

J. GERALD WILLIAMS,

Attorney General of Alaska,

Juneau, Alaska,

Attorney for Defendants M. P. Mullaney, Tax Commissioner and William Liese, Tax Assessor.

MIKE STEPOVICH,

Of Fairbanks, Alaska,

Attorney for Defendant, City of Fairbanks.

MAURICE T. JOHNSON,

Of Fairbanks, Alaska,

Attorney for Defendants, Fairbanks School District and Its Directors L. F. Joy, Frank Conway, A. F. Coble and Frank P. DeWree.



## OPINION

The Organic Act of Alaska approved August 24, 1912, as amended by act of June 3, 1948, T 48, section 78 USCA, Supp., 48-1-1 ACLA, 62 Stat. 302, will hereinafter be referred to as the Organic Act; Chapter 10 of the Session Laws of Alaska 1949 will hereinafter be referred to simply as Chapter 10; Alaska Compiled Laws Annotated 1949 will be referred to as ACLA; the portion of Alaska outside of cities (also called municipal corporations), independent school districts, incorporated school districts and public utility districts will be referred to hereinafter as the "Tax Commissioner's" district; the word city shall include the municipal corporations of Juneau, Douglas and Fairbanks, each of which is classified under the laws of Alaska as a first class city.

## Section 1 Mining Claims

The Act of Congress of June 3, 1948, amending section 9 of the Organic Act of Alaska provides, "All taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the true and full value thereof, except that unpatented mining claims and nonproducing patented mining claims, which are also unimproved, may be valued at the price paid the United States therefor, or at a flat rate fixed by the Legislature, but if the surface ground is used for other than mining purposes, and has a separate and independent value for such other purposes, or if there are improvements or machinery or other property thereon of such a

character as to be deemed a part of the realty, then the same shall be taxed according to the true and full value thereof. No tax shall be levied for territorial purposes in excess of 2 per centum upon the assessed valuation of the property therein in any one year; nor shall any incorporated town or municipality levy any tax, for any purpose, in excess of 3 per centum of the assessed valuation of property within the town in any one year.”

The legislature of Alaska by Chapter 10, which became effective on the 21st day of February, 1949, provided in section 3 thereof for the calendar year of 1949 and each calendar year thereafter, “There is hereby levied, and there shall be assessed, collected and paid a tax upon all real property and improvements and personal property in the territory at the rate of 1% of the true and full value thereof. For the purposes of this section, the assessed value of unimproved, unpatented mining claims which are not producing and non-producing patented claims upon which the improvements originally required for patent have become useless through deterioration, [108] removal or otherwise, is hereby fixed at \$500 per each 20 acres or fraction of each such claim \* \* \*.”

The plaintiff has mining claims both patented and unpatented which under the terms of said section 3 would be subject to tax which have been taxed by the taxing units wherein they lie.

It is maintained by plaintiff and intervenor that the Territorial Legislature had no authority from Congress to provide in section 3 of Chapter 10 that

the value of mining claims which were nonproducing and were without improvements should be fixed at \$500 for each 20 acres or fraction thereof in such claim in that such a valuation is not the price "paid the United States therefor" nor a "flat rate."

The word "flat" is ordinarily an adjective meaning "absolute; unvarying; exact; even";

Webster's International Dictionary, 2nd Ed.

In *Salt Lake City v. Christensen Co.*, 95 P. 523, it was held that the levy of a specified tax in an equal sum upon all merchants was a flat rate.

In *Holst v. Roe*, 39 Oh. St., 340; 48 Am. Rep. 459, it was held that a tax per capita upon animals owned by a taxpayer would be invalid as not being according to value.

In *Northwestern Improvement Co. v. State*, 220 N.W. 436, a statute providing for a tax of 3 cents for each acre of mineral resources was held to be a flat tax rate per acre and invalid as not according to value.

In re opinion of the Justices (N.H) 149 Atl. 334, it was held that a proposed bill to make a valuation per acre, the test of taxibility was invalid.

"A statute is invalid which sets up an arbitrary and inflexible standard for the valuation of property \* \* \*" 61 C. J. page 152, section 89.

In *Reelfoot Lake Levy District v. Dawson* (Tenn.) 36 S. W. 1042, an act of the legislature providing that the board of levy directors had the duty "to assess and levy a contribution tax not exceeding 10 cents per acre \* \* \*" was [109] invalid as contra-

vening the Constitution which provided, "All property shall be taxed according to its value \* \* \*"

Under section 3 of Chapter 10, a mining claim of one acre would be valued at \$500 which is at the rate of \$500 per acre; a claim of 10 acres would be valued at \$500 which is at the rate of \$50 per acre; a claim of 20 acres would be valued at \$500 which is at the rate of \$25 per acre; a claim of 20.1 acres, which is the maximum area of a quartz claim, would be valued at \$1000 which would be at the rate of \$49.75 per acre; a claim of 40 acres would be valued at \$1000 which would be at the rate of \$25 per acre; a claim of 160 acres would be valued at \$4000 which would be at the rate of \$25 per acre.

Thus the tax on mining claims is not a flat rate and the assessment is not according to the true and full value thereof required by the Organic Act.

The results of what is said hereinabove are that the territorial tax of 1% upon mining claims of plaintiff and also of the intervenor is invalid.

## Section 2 Lack of Territorial Equalization Board

While Chapter 10 provides for equalization of assessments in each judicial division, there is no provision for a Board of Equalization to equalize the taxes of the various taxing districts in various judicial divisions. Counsel for plaintiff and intervenor maintain that the lack of such a board in itself makes the territorial tax of Chapter 10 lacking in uniformity.

Boards of equalization are creatures of statute.

Michigan Central Railroad v. Powers, 201

U.S. 301-302.

State Railroad Tax Case, 83 U.S. 609 61 C.  
J., p. 749, sec 922 and 935.

Consequently as the laws of Alaska do not require a Territorial Board of Equalization, the lack of such a board does not in itself show a lack of uniformity in the tax imposed by Chapter 10. [110]

### Section 3 Uniformity of Taxation under Chapter 10

By Chapter 10, the Territorial Legislature provided for a territorial tax of one per cent of the assessed value of property, real or personal, in Alaska. It provided that a large part of such taxes were to be collected by municipalities, public utility districts and school districts at their expense. Property which was not within a municipal corporation or a school district or public utility district was to have its taxes assessed and collected by the Tax Commissioner under the special provisions of Chapter 10.

Property which lay within the boundaries of a city, or town or independent school district or incorporated school district or public utility district was to have its property assessed and collected by the municipality or district in which it lay and according to the property tax laws of that municipality or district (s 4, Ch 10). Independent school districts are composed of a city plus some surrounding area while incorporated school districts do not have any city within their boundaries.

Property which lay outside the boundaries of a city but within the boundaries of an independent

school district was to be assessed and tax collected by the officers of the independent school district according to the tax laws of the district which was allowed the same penalties, rate of interest and exemptions as its city and the power and duties of a city with reference to the levy, assessment and collection of taxes and all the laws relative to the levy and collection of taxes in municipal corporations (37-3-54).

The word uniform or uniformity as used in the Organic Act of Alaska (s. 9 as amended) is the same as used in the United States Constitution where Congress was given the power to lay excise taxes etc., "but all duties, imposts and excises shall be uniform throughout the United States."

In *Knowlton v. Moore*, 178 U. S. 41, the Supreme Court interpreted the meaning of the word uniform appearing in the Constitution as above mentioned. The construction approved by [111] the Court in that case was (page 84) "that the words 'uniform throughout the United States' do not relate to the inherent character of the tax as respects its operation on individuals, but simply requires that whatever plan or method Congress adopts for laying the tax in question, the same plan and the same method must be made operative throughout the United States; that is to say, that wherever a subject is taxed anywhere, the same must be taxed everywhere throughout the United States, and at the same rate."

And page 96, "The proceedings of the Continental Congress also make it clear that the words

‘uniform throughout the United States’ which were afterwards inserted in the Constitution of the United States, had, prior to its adoption, been frequently used, and always with reference purely to a geographical uniformity and as synonymous with the expression, ‘to operate generally throughout the United States.’ ”

Page 104, “The sense in which the word ‘uniform’ was used is shown by the fact that the committee, whilst adopting in a large measure the proposition of Mr. McHenry and General Pinckney, ‘that all duties, imposts, excises, prohibitions or restraints . . . shall be uniform and equal throughout the United States,’ struck out the words ‘and equal.’ Undoubtedly this was done to prevent the implication that taxes should have an equal effect in each State. As we have seen, the pith of the controversy during the Confederation was that even, although the same duty or the same impost or the same excise was laid all over the United States, it might operate unequally by reason of the unequal distribution or existence of the article taxed among the respective States.”

In *Fox v. Standard Oil Co.*, 294 U. S., page 102, the Supreme Court stated, “Third. The statute does not violate the constitution of West Virginia which requires that taxation shall be equal and uniform through the state. Article 10, section 1.

The constitution of Indiana has a like provision which was considered by this court when sustaining the chain store [112] tax in *State Board of Tax Commissioners v. Jackson*, *supra*, at p. 542. The

view was expressed that the standard of uniformity under the constitution of the state was substantially the same as the standard of equality under the Fourteenth Amendment of the constitution of the nation.”

To the same effect is *Alaska Steamship Co. v. Mullaney*, 180 F. 2nd 817.

In *Fernandez v. Wiener*, 326 U. S. 359, the court said, “It has long been settled that within the meaning of the uniformity requirement a tax is uniform when it operates with the same force and effect in every place where the subject of it is found.”

Cities have the statutory power to levy, assess and collect taxes up to and including 3% of the value of the non-exempt property within their boundaries, (s. 9, Organic Act as amended, T 48, USCA, section 44, supp.) The grant to the city by the legislature of the right to assess, collect and keep the territorial one per cent tax gives those cities the right to assess, levy and collect a total of 4% of the value of property within their boundaries.

The amendment of June 3, 1948, T 48, USCA, section 44, supp. raised the taxing ability of “any incorporated town or municipality” from 2% to 3% but did not raise the power of school districts to tax in excess of 2% of the assessed valuation.

As long as all city expenses are not over 3% of the assessed valuation of its property, there will be no difference between the sum raised by levy of 3% for the city expenses and one wherein the levy



is for 2% for city expenses plus 1% for the territorial tax. But if the city's expenses are to be over 3% of the assessed valuation of the city's property, the city will be compelled to collect the territorial tax of 1% in order to pay the expenses which are over the 3%.

An independent school district is limited to a tax levy of 2% of the assessed valuation of its property. Consequently [113] in order for it to pay expenses above 2%, it will have to utilize the territorial tax.

Cities were, by s. 4, Ch. 10, allowed to retain for their own uses the entire one per cent of the territorial tax collected by them. The independent school districts and incorporated school districts were given the right to collect and to keep such portion of the territorial taxes as was necessary for school expenses, but they were required to pay over to the Territorial Treasurer any amount of such taxes which existed after satisfying such school expenses.

As Chapter 10 levied the territorial tax and gave the entire tax to the city collecting it and as the power to tax and the power to dispose of it are inseparable powers, it appears that the levy of a tax in Chapter 10 and the giving of the same to the cities collecting were separate acts, each of which was entirely within the power of the legislature. (61 C. J. p. 1520.)

The duty to collect taxes may be laid on a municipality by the state. Some states allocate in advance part of the tax to the municipality (61 C. J. p. 1523).

Counsel for defendants assert that the legislature has in effect in Chapter 10 made two classes for taxation, to wit: the first class being property within incorporated municipalities and the second class being property outside incorporated municipalities. It is thus an alleged classification according to the location of the property.

Classifications according to the location of the property are invalid.

Philadelphia, B. & W. R. Co. v. Mayor and Council of Wilmington (Del. 48) 57 Atl. 2nd, 759.

1 Cooley on Taxation,  
sec. 335.

Essex County Park Comm. v. West Orange (N. J.), 73 Atl. 511.

In Re State Taxation (Me.),  
55 Atl. 827.

Monaghan v. Lewis,  
59 Atl. 948.

Village of Hardwick v. Town of Walcott (Vt.) 129 Atl. 159 [114]

In Maryland, where the constitution does not forbid local laws, it was held in *Grossman v. Baughan*, 129 Atl. 370, that a law limited to the City of Baltimore, was valid.

As the Organic Act of Alaska (48 USCA, section 78) provides "All taxes shall be uniform upon the same class of subjects \* \* \*" it is believed

the subject of taxation is the real and personal property of a taxpayer and that a classification of property as within or without a city would not be a classification of the subject of taxation at all.

*Schoyer v. Comet Oil & R. Co. (Pa.)*, 130 Atl. 416, the statute made gas taxes paid to a corporation vendor a prior lien on the vendor's property. Held: that the statute was invalid as was the classification of vendors as individual or corporations.

It was stated by the court: "The test of classification is whether it produces diversity in results or lack of uniformity in its operation either on given subjects of the tax or the persons affected as payers. There must be a real distinction between the objects with which the law deals for it to be valid."

The above-mentioned classification (within or without a municipal corporation) produces diversity and lack of uniformity within each of said classes as hereinafter shown.

Also if such classification was made, it would be invalid by reason of lack of uniformity within each such classification.

The following lack of uniformity is found:

#### Property Within Cities

The cities of Juneau and Douglas by ordinance allow a 2% discount if the whole tax is paid before delinquent. This was by reason of an ordinance of the cities of Juneau and Douglas passed long before the passage of Chapter 10. The Territorial Legislature is presumed to have known of the or-

dinance and to have approved of the same in requiring the territorial tax to be assessed and collected according to the laws of the city wherein it lay. The tax in the City of Juneau [115] and Douglas therefore is 98/100 of 1% whereas in the City of Fairbanks no rebate is allowed and 100/100 of 1% of the territorial tax must be paid.

In the City of Juneau taxes are delinquent if the first half is not paid by 4 o'clock p.m. on November 15th of the year of levy. If not paid at that time, it becomes delinquent and the whole tax becomes due and a penalty of 15% plus interest at 12% per year is added. If the first half is paid before delinquent, the second half is not due until May 15th of the next year.

In the City of Fairbanks taxes are delinquent if not paid prior to October 16th of the year of levy. A penalty of 10% plus interest at 10% per year is added for delinquency. If the first half of the tax is paid on or before October 15, the second half is due March 31st of the ensuing year.

In the City of Douglas taxes are delinquent if not paid before November 16th of the year of taxation. A penalty of 10% plus 8% interest is added for delinquency. If the first half is paid before delinquent, the second half is due March 15th of the ensuing year.

The lien for the payment of taxes is impressed upon the property when the assessment is complete which in Juneau is on or before the 2nd Tuesday in October of the year of levy. (Juneau ordinance

attached to affidavit of C. L. Popejoy, filed herein January 18, 1950, sections 6, 7 and 8). In Douglas, the lien attaches in the month of August of year of levy (section 7, Ordinance of Douglas, attached to affidavit of A. J. Balog, filed herein January 18, 1950).

In the City of Fairbanks, the lien attaches on the first day of October of the year of levy.

Unless otherwise provided by statute, the tax becomes a lien upon the property taxed as soon as the levy and assessment are made and the rate fixed. 61 C. J. s. 1172, p. 922.

The statutes of Alaska and the ordinances of the cities and districts provide that the tax lien shall attach to real and personal property upon the assessment being made as hereinbefore mentioned. S. 37-3-54; S. 16-1-35 (9) ACLA.

Also ordinances.

#### Property Outside the Cities

This would include all of the property within the Tax Commissioner's taxing district and public utility districts and [116] incorporated school districts and independent school districts outside the included city.

Chapter 10 provides for the following exemptions from taxes: (1) Personal property of any person to the value of \$200; (2) New commercial businesses during the time of construction but not more than 3 years; (3) Homesteads from the date of final entry until one year after the patent has been granted; (4) As an industrial incentive, the Tax Commissioner with the approval of the Divisional Board of

Assessment may grant an exemption up to one-half of the territorial tax for a period not exceeding 10 years from the date production commenced (sec. 6, Ch. 10).

Exemptions granted by the Tax Commissioner as an industrial incentive mentioned above are by section 6 (h) (4) of Chapter 10 made applicable to all other taxing districts.

The exemptions other than mentioned in sec. 6 (h) (4) do not apply to any taxing district other than the Tax Commissioner's district. The cities and districts to which the city tax law has been made applicable have an exemption of \$200 upon the value of the furniture of the head of a family or householder but that is much narrower than the \$200 exemption mentioned as to an exemption in the Tax Commissioner's district. (16-1-35(9).)

In the independent school districts of Juneau, Douglas and Fairbanks outside the included city, there is a right to redeem from tax sales within 2 years of the sale. (See ordinances and resolution of cities and independent school districts.) In the Tax Commissioner's district, there is no such redemption.

In the school districts outside of cities, notice by publication for four consecutive weeks must be given prior to a tax sale whereas the only notice given for the sale for delinquent taxes within the Tax Commissioner's district is the filing of a delinquent list of taxes in the District Court with the clerk, another list in the Office of the Treasurer of Alaska and a third list in the Office of the Register of the [117] District Land Office (s. 42, Ch. 10). Consequently if

the territorial legislature did so classify, there were many matters within each class which were not uniform and which make the classification invalid.

The matters mentioned above as constituting lack of uniformity within and without cities constitute a lack of uniformity between taxing districts generally, the existence of which makes the taxing portion of Chapter 10 invalid. The 2% discount given by the independent school districts of Juneau and Douglas are not given anywhere else except in the cities of Juneau and Douglas.

In Fairbanks, the Fairbanks independent school district and in the Tax Commissioner's district, there is no discount on taxes.

Sec. 32, Ch. 10, effective as to the Tax Commissioner's district only, makes taxes payable upon the first day of February of the ensuing year. The lien of the tax in the Tax Commissioner's district becomes fixed upon the completion of the assessment which is to be on or before the first day of September for 1949, and thereafter on or before the first day of July (sections 16 and 34, Ch. 10).

### Valuation

Sec. 11, Ch. 10 which applies only to the Tax Commissioner's district states, "The true value of property shall be the value at which the property would generally be taken in payment of a just debt from a solvent debtor." Section 9 of the Organic Act requires that assessments of property be made "according to the true and full value thereof."

Sec. 9, (Organic Act as amended) 62 St. 302, T. 48 USCA, s. 78, Supp.

#### Section 4 Taxes Within the City of Fairbanks

Sec. 3, Chapter 10 provides "In the calendar year of 1949 and each calendar year thereafter there is hereby levied and there shall be assessed, collected and paid a tax upon all real property and improvements and personal property in the [118] territory at the rate of one per centum of the true and full value thereof."

In sec. 4, Ch. 10, it states that within the limits of a city, the territorial tax shall be collected and enforced in the manner prescribed by the property tax laws of the municipality.

The territorial tax became a lien upon the property within the City of Fairbanks upon the 26th day of September, 1949, when the assessment rolls were by resolution accepted. (See resolution of September 26, 1949, and ordinances of City of Fairbanks attached to the motion for a preliminary injunction.)

In said resolution it was also provided that a 20 mill levy be made for the school and city expenses in addition to the one per cent territorial tax.

As the levy of the tax was made by section 3, Ch. 10 and as the City of Fairbanks assessed the property on the 26th day of September, 1949, and also in the same resolution made arrangements for the collection of the territorial tax, it had done everything required by law at that time.

However, upon the 10th day of October, 1949,



the council of the City of Fairbanks amended its resolution of September 26, 1949, by providing that there should be "0" taxes collected for the territorial tax.

Sec. 4, Ch. 10 provides that the cities may assess and collect the territorial tax on property situated in said cities in the manner prescribed by the property tax laws of the city. The city may also levy additional taxes to be assessed and collected at the same time and manner as provided in sec. 3.

### Section 5 Intervenor's Case

As intervenor is the owner of property within the cities of Juneau and Douglas, the matters stated hereinbefore with reference to the legality of the tax upon the plaintiff's property in the City of Fairbanks show the illegality of Chapter 10 with reference to intervenor's said property. Likewise, [119] the conclusions announced hereinbefore relative to the illegality of said tax as to the property of the plaintiff within the Fourth Judicial Division but outside the City of Fairbanks apply to intervenor's property in the First Judicial Division but outside the cities of Juneau and Douglas.

Intervenor paid the following taxes upon its boats in the Juneau independent school district, to wit: tug Trojan 43 tons at \$4, \$172; mine tender Amy 22 tons at \$4, \$88; scow #1 22 tons, \$1; scow #3 271 tons, \$10; scow #4 271 tons, \$10; scow #3 271 tons, \$10.

It thus appears that intervenor was in no way injured by the provisions of Chapter 88, Session Laws of Alaska, 1949, amending section 3, chapter 10, so as to allow boats to be valued according to their actual value or at \$4 per registered ton. It chose to have part of its boats assessed at actual value and part of them at \$4 per registered ton, apparently thereby securing the lowest tax rate for its property. Intervenor is now in no position to assert the invalidity of the amendment.

### Section 6 Who May Complain of the Illegality of the Tax

The general rule is of course that those only who would be injured by the operation of the illegal tax may complain of the illegality. *Alaska Steamship Co. v. Mullaney*, 180 F. 2d 815.

The lien of the illegal tax has already attached to the properties of plaintiff and intervenor by reason of Chapter 10's levy in section 3. The complaint in this action states facts sufficient to constitute a suit to remove a cloud and also to prevent future clouds. The properties of intervenor and plaintiff, real and personal, are subject to tax.

The plaintiff and intervenor, as owners of mining claims outside of cities would be directly injured to the extent of any territorial tax collected from them under the provisions of Chapter 10.

These liens constituted clouds upon the owner's title prior to the bringing of this action and at all times thereafter. [120] The evidence shows that

further clouds will be cast upon property of plaintiff and intervenor on or prior to the second Tuesday in October, 1950, if they are not prevented by this suit. The lien of the Tax Commissioner's district will attach to plaintiff's property July 1, 1950.

Under the above-mentioned conditions, plaintiff and intervenor have shown that the tax imposed by Chapter 10 is illegal and that plaintiff and intervenor have a right to raise the question.

The cities of Douglas and Juneau and Fairbanks refrained from providing for the collection of the territorial 1% tax. Consequently, when the intervenor paid its taxes, it did not (though its complaint in intervention states to the contrary in paragraphs VII and VIII) pay any part of the territorial tax. The tax levy of the City of Fairbanks was 20 mills, of Juneau 20 mills and Douglas 15 mills, but in each instance the resolution fixing such rates clearly showed that it was for the school and municipal purposes of the cities and was not a levy of the territorial tax.

The Tax Commissioner has levied and assessed and is attempting and threatening to collect said territorial 1% tax for 1949 from the intervenor and the plaintiff. This tax levy has created a lien upon all of the property of plaintiff and intervenor and also casts a cloud upon the same. Taxes for the calendar year of 1950 will create a lien upon all of the property of the plaintiff and intervenor when the assessment of such property is made which will be the month of October or prior

thereto, 1950, unless there is restraint by the court.

In *Port Angeles W. R. Co. v. Clallam County*, 20 F. 2d 204, it stated "The allegations of the bill, for present purposes, must be taken as true, and jurisdiction in a court of equity to remove a cloud upon the title to personal property is recognized."

It was stated the taxes being spread without limitations upon the tax rule against the railway property owned by [121] the United States, cast a cloud upon such property, to the removal of which equity alone can be substantial justice.

The court quoted with approval from the following cases as follows:

*Union Pacific R. Co. v. Cheyenne*, 113 U. S. 516: "Even the cloud cast upon its title being taken under which such sale could be made would be a grievance which would entitle him to go into a Court of Equity for relief."

In *Ohio Tax Cases*, 232 U. S. 576, the court said: "Right to invoke the equity jurisdiction is clear; for the act specifically creates a lien upon the real estate of appellants from the cloud of which they seek to free it \* \* \* and the bills alleged threatened irreparable injury through the enforcement of penalties \* \* \*"

In *Allen v. Hanks*, 136 U. S. 300, it was said "Must she remain inactive while the sale proceeds and until the purchaser obtains and has recorded the Marshal's deed to her land and then bring an action to have the deed cancelled and the sale set aside as clouds upon her title? It needs no argument to show that the existing levy upon appellee's

land constitutes itself a cloud upon her title which if not removed and the proposed sale prevented will injure the saleability value of the land and otherwise injuriously affect her rights.”

In *Rogers v. Nichols*, 71 N. E. 950, it was stated, “A bill can be maintained to prevent clouding as well as to remove a cloud from title to real estate.”

Section 16-1-113, ACLA, provides that all general taxes levied shall be liens upon the property assessed. The statute as to the organization of independent school districts and their powers and the ordinances of the independent school districts and of the cities of Fairbanks, Juneau and Douglas provide that the taxes levied shall be liens upon assessment being made. Section 37-3-54; section 16-1-35 (9).

The evidence shows that plaintiff and intervenor lacked an adequate remedy at law, there being no law authorizing a city or independent school district or the Territory itself [122] to permit the payment of taxes under protest and refund the same if the law under which they were levied was declared invalid by the courts. The nearest thing to such a statute was section 48-7-1, ACLA. It provided that whenever taxes were paid to the Tax Commissioner under protest and covered into the treasury, the Tax Commissioner could if it was approved by the Attorney General and the Treasurer issue a voucher on the general fund for the refund of the tax money.

There was no provision for paying any interest upon the money paid under protest, a matter in

itself sufficient to make the remedy inadequate.

*Proctor & Gamble Etc. v. Sherman Etc.*, 2 F. 2nd 165. *Southern Cal. Telephone Co. v. Hopkins*, 13 F. 2nd 815. *Hopkins v. Southern Cal. Telephone Co.*, 275 U. S. In affirming 13 F. 2nd 815, the Supreme Court said: P. 399, "In no permitted proceeding at law could interest upon payments be recovered for the time necessary to obtain judgments. \* \* \* We find no clear adequate remedy at law. The equity proceeding was permissible."

Also most or all of the taxes mentioned in this case would not be paid to the Tax Commissioner but to the cities or independent school districts and so never covered into the Treasury of the Territory.

Still further, if the Tax Commissioner issued a voucher against the general funds of the territory to repay the tax paid under protest, there would be no assurance that the voucher would be paid promptly.

At best, the section above mentioned applied to payments to the Tax Commissioner and did not constitute any authority for payments to be paid under protest to municipal corporations or independent school districts.

Consequently, said section did not provide an adequate remedy to plaintiff or intervenor.

That interest cannot be recovered on taxes paid under protest and returned unless the statute especially so provides, [123] see

*U. S. v. Nez Perce County, Idaho*,  
95 F. 2nd 232 (C.C.A. 9).

U. S. v. Lewis County, Idaho,  
95 F. 2d 236.

Jackson County v. U. S.,  
308 U. S. 343.

If the plaintiff or intervenor had paid the territorial tax under protest, the bringing of a number of suits would have been necessary as in every instance where the property was outside the Tax Commissioner's taxing district, the tax was either given wholly to the collecting agency (the cities), or given largely to the extent of their school expenses to the independent school districts. Thus plaintiff would have been compelled to bring 3 actions: one against the Fairbanks independent school district, the City of Fairbanks and the Territory. The intervenor would have been compelled to bring 5 suits, to wit: against the City of Juneau, the Juneau independent school district, the City of Douglas, the Douglas independent school district, and the Territory of Alaska. The bringing of the present suit therefore prevented a multiplicity of actions.

The whole of Chapter 10 is built around sections 3 and 4 which provide for the levy of the tax and its disposition. As those two sections are clearly invalid, there is nothing remaining in the chapter of any force, so the whole chapter is invalid, except as to boats or vessels under Ch. 88 SLA 1949.

Inasmuch as the evidence in this case did not show any property of plaintiff or intervenor to be in a public utility district or that there were any parcels of land lying partly in one taxing district

and partly in another, there has been little or no discussion of their effect upon the problems of plaintiff and intervenor.

Each party shall pay the costs and disbursements incurred by them or it except that the defendants the City of Fairbanks and the Fairbanks independent school district and their officers, shall recover their costs and disbursements against plaintiff and intervenor, but such costs shall not include attorney's fees.

Counsel for plaintiff and intervenor may draw Findings of Fact, Conclusions of Law and Decree in accordance with the [124] foregoing opinion.

Done at Fairbanks, Alaska, this 19th day of June, 1950.

HARRY E. PRATT,  
District Judge.

[Endorsed]: Filed June 19, 1950. [125]

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[Title of District Court and Cause.]

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having come on regularly for trial before the Court on May 15, 1950, on the complaint of plaintiff and the complaint in intervention of intervenor, and the amended answer of the defendants, M. P. Mullaney, Tax Commissioner and the answers of the defendants, City of Fairbanks, Alaska, a municipal corporation and Fairbanks School District, an independent school district



corporation, and L. F. Joy, Frank Conway, A. F. Coble and Frank P. DeWree to the plaintiff's complaint, and the amended answer of defendant, M. P. Mullaney, Commissioner of Taxation, to the complaint in intervention of the intervenor (the defendant William Liese, Tax Assessor having made no appearance herein, and the defendants City of Fairbanks, Alaska, a municipal corporation, Fairbanks School District, and the defendants L. F. Joy, Frank Conway, A. F. Coble and Frank P. DeWree, Directors of the Fairbanks School District, having filed no answer to the Complaint in Intervention), and plaintiff and intervenor being represented by their attorneys, Faulkner, Banfield & Boochever, Edward F. Medley and Charles J. Clasby, and the defendant, M. P. Mullaney, Commissioner of Taxation, being represented by his attorneys, J. Gerald Williams, Attorney General of Alaska, and John H. Dimond, Assistant Attorney General of Alaska, and the City of Fairbanks by its attorney, Mike Stepovich, Jr., and the Fairbanks School District and its Directors by their attorney, Maurice T. Johnson; and evidence having been adduced before the Court on behalf of plaintiff, intervenor and the defendant, M. P. Mullaney, Commissioner of Taxation of Alaska, and arguments having been made by respective counsel for plaintiff, intervenor and defendant, M. P. Mullaney, and the cause having been submitted [126] for judgment on May 15, 1950, and the Court having taken the matter under advisement on that date and having, on the 19th day of

June, 1950, rendered its written opinion, the Court makes the following

### Findings of Fact

#### I.

a. The plaintiff is a resident and inhabitant of the Territory of Alaska, Fourth Judicial Division, residing at Fairbanks, Alaska, and he has been such resident and inhabitant at all times mentioned herein and mentioned in the complaint;

b. That at all times in the years 1949 and 1950, plaintiff was and is the owner of the property hereinafter described, with the taxing unit or district wherein it lies specified as also the value thereof as fixed by the assessor of the taxing unit wherein it lies, to wit:

Taxing Unit	Description of Property	Assessed Valuation
1. City of Fairbanks	Lot Seven (7), Block Sixty (60) with cabin .....	\$ 1,000.00
2. Fairbanks Independent School District	Non-producing, unimproved mining claims known as Discovery Claim and One Above Discovery, also one-third ( $\frac{1}{3}$ ) interest in Gold Engine Bench Claim (40 acres), St. Patrick's Creek, patented, and other real property .....	5,000.00
3. Fourth Division of Outside of Municipalities School Districts and Utility Districts	Non-producing patented and unpatented mining claims valued according to Section 3, Chapter 10, Session Laws of Alaska, 1949, at \$60,713.46, and personal property valued at \$7,500.00 .....	68,213.46

c. That the mining claims mentioned in the last preceding sub-paragraph, to wit: I b. 3., were at all times after February [127] 21, 1949, unimproved mining claims which were not and are not producing, and if patented the improvements required for patent have become useless through deterioration, removal or otherwise.

d. That the said property mentioned in I b. 3. hereof has been valued at \$500.00 for each 20 acres or fraction thereof in each claim and is carried on the tax rolls of the defendant Tax Commissioner in the assessed value of \$60,713.46 for the real property and \$7,500.00 for the personal property, and one per cent (1%) of the valuation thereof has been charged against such property as a Territorial Tax under said Chapter 10 by the said Tax Commissioner.

## II.

a. That intervenor is a corporation duly and regularly organized under the laws of West Virginia and authorized and qualified to do business in the Territory of Alaska, and it has complied with all the laws of Alaska relating to corporations doing business in the Territory of Alaska, and it has paid all corporation license taxes due the Territory and filed all reports required by law;

b. That intervenor for all of 1949 and 1950 was and is the owner of the following property in the following taxing districts of the Territory of Alaska, of the following assessed value as fixed by the official assessor, to wit:

Taxing Unit	Description of Property	Assessed Valuation	Net Tax
1. City of Douglas	Transmission Lines .....	\$ 2,500	\$ 35.75
2. Douglas Independent School District	19 Mining Claims .....	9,500	
	Houses .....	3,370	
	240 Power Plant .....	100,000	
	Foundry, etc. ....	10,000	
		<hr/>	
		\$ 122,870	1,204.13
3. City of Juneau	Cars and Trucks .....	1,850	36.26
	Pole Lines .....	5,600	
	Wharf and Equipment .....	10,000	
	Warehouse and Shed .....	3,000	
	Dormitory .....	2,000	
	Supplies .....	40,000	1,187.76
	Lot 6, Block 119 .....	500	9.80
	Lot 5, Block 27 .....	800	
	House .....	10,846	
	Personal .....	1,000	247.86
	Lot 7, Block 5 .....	5,000	98.00
		<hr/>	
		\$ 80,596	<hr/> \$ 1,579.68

Taxing Unit	Description of Property	Assessed Valuation	Net Tax
4. Juneau Independent School District	Land .....	49,000	
	Buildings, Transmission Lines .....	109,000	
	Perseverance Claims .....	11,500	
	Salmon Creek Plant .....	1,518,220	
	Nugget Creek Plant .....	25,000	
	Sheep Creek Plant .....	295,430	
	9 Claims (Sheep Creek) .....	900	
	Building .....	570	
		\$2,009,620	\$19,694.28

5. Territory of Alaska in the First Judicial Division Outside Municipalities, Independent or Incorporated School Districts, or Public Utility Districts.	Boats and Watercraft .....		291.10
	Annex Plant and Equipment .....	50,000	
	Annex Creek Line .....	4,000	
	Annex Residences (3) .....	3,000	
	Personal Exemption .....	200	
		\$ 57,000	
	Return Filed For .....	\$ 56,800	
	Red Cliff Lode 0.603 acres	\$ 500	
	16 Patented Claims	\$8,000	
	10 Patented Claims	\$5,000	

c. That the intervenor is the owner of both patented and unpatented mining claims lying in the Douglas Independent School District, the Juneau Independent School District, and the portion of said First Judicial Division outside of municipalities, school districts and public utility districts; that said last mentioned mining claims are unimproved unpatented mining claims that are not producing; that another part of said last mentioned mining [129] claims are unimproved non-producing patented mining claims upon which the improvements originally required for patent have become useless through deterioration, removal or otherwise.

d. That the officers of the taxing district wherein said mining claims lie have caused the mining claims of plaintiff and/or intervenor to be valued at \$500.00 for each 20 acres, or fraction thereof in a claim, pursuant to said Chapter 10, (except 9 claims on Sheep Creek in the Juneau Independent School District); that the defendant M. P. Mullaney, as Tax Commissioner, is attempting to collect a one per cent (1%) tax thereon, from plaintiff and/or intervenor.

### III.

a. That the incorporated cities of Fairbanks, Juneau and Douglas, and the Juneau Independent School District, the Douglas Independent School District, and the Fairbanks Independent School District did not provide for the collection of the

Territorial Tax levied under the provisions of Chapter 10, Session Laws of Alaska, 1949, as amended with the exception mentioned in Finding of Fact VI.

b. That neither plaintiff nor intervenor has paid any of the taxes levied by said Chapter 10 except on boats as mentioned hereinafter.

#### IV.

a. That the cities of Juneau and Douglas, and the Independent School Districts of Juneau and Douglas, by ordinance allow a two per cent (2%) discount if the whole tax is paid before any part thereof is delinquent. Thus the tax there is 98/100 of one per cent (1%), whereas in the City of Fairbanks, and other municipalities, school districts, and utility districts, no rebate [130] is allowed and 100/100 of one per cent (1%) of the Territorial tax must be paid.

b. In the City of Juneau taxes are delinquent if the first half is not paid by 4 o'clock p.m. on November 15th of the year of levy. If not paid at that time, the whole tax becomes due and a penalty of fifteen per cent (15%) plus interest at twelve per cent (12%) per year is added. If the first half is paid before delinquent, the second half is not due until May 15th of the next year.

c. In the City of Fairbanks taxes are delinquent if not paid prior to October 16th of the year of levy. A penalty of ten per cent (10%) per year is added for delinquency. If the first half of the

tax is paid on or before October 15, the second half is due March 31st of the ensuing year.

d. In the City of Douglas taxes are delinquent if not paid before November 16th of the year of taxation. A penalty of ten per cent (10%) plus five per cent (5%) interest is added for delinquency. If the first half of the tax is paid before delinquency, the second half is due March 15th of the ensuing year.

e. The lien for the payment of taxes is impressed upon the property when the assessment is complete which in Juneau is on or before the 2nd Tuesday in October of the year of levy. In Douglas, the lien attaches in the month of August of the year of levy. In the City of Fairbanks, the lien attaches on the first day of October of the year of levy.

The statutes of Alaska and the ordinances of the cities and districts provide that the tax lien shall attach to real and personal property upon the assessment being made as hereinbefore mentioned.

f. The ordinances of the cities of Douglas, Juneau and Fairbanks, and of the Juneau, Douglas and Fairbanks Independent School Districts, make no provision whereby taxes may be paid under protest, and recovered when the statute creating the tax is duly adjudged invalid. Sec. 48-7-1 ACLA only approaches such provision when taxes are paid direct to the Territory.



V.

a. Said Chapter 10, Section 6, provides for the following exemptions from taxes in favor of residents in Alaska outside municipalities, school districts, and utility districts, to wit:

1. Personal property of any person to the value of \$200.00.

2. New Commercial businesses during the period of construction, but not over three years.

3. Homesteads from the date of final entry until one year after the patent has been granted.

4. As an industrial incentive, the Tax Commissioner, with the approval of the Divisional Board of Assessment, may grant an exemption up to one-half the Territorial tax for a period not exceeding 10 years from the date production commenced.

b. That the cities, the independent and incorporated school districts and the public utility districts do not have the exemptions mentioned in V a. 1., 2., and 3. They have an exemption of \$200.00 upon the value of the furniture of the head of a family or householder. Exemptions allowed under V a. 4. are extended to municipalities, school and utility districts.

c. In the Independent School Districts of Juneau, Douglas and Fairbanks, outside the included cities, and in the cities of [132] Juneau and Fairbanks, there is by ordinance a right to redeem real estate from tax sales within two years of sale. No

such provision appears in the law governing the other taxing units.

d. In the municipalities of Juneau, Douglas and Fairbanks, and in the Juneau, Douglas and Fairbanks Independent School Districts notice by publication for four consecutive weeks must be given prior to a tax sale, whereas the only notice given for the sale for delinquent taxes within the Tax Commissioner's District, to wit: The part of Alaska not within a municipal corporation, an independent or incorporated school districts, or a public utility district is the filing of a delinquent list of taxes in the U. S. District Court with the Court Clerk, another list in the office of the Treasurer of Alaska, and a third in the Office of the Register of the District Land Office.

e. Section 32 of said Chapter 10, effective outside municipalities, incorporated and independent school districts, and public utility districts, makes taxes payable upon the first day of February of the ensuing year. These taxes become a lien upon the completion of the assessment which by the terms of said Chapter 10 is to be on or before the first day of September, 1949, and on or before the first day of July in subsequent years.

f. In independent and incorporated school districts and public utility districts the taxes imposed are a personal liability of the taxpayer. In the Territory at large outside of said incorporated and independent school districts, public utility districts

and cities, the taxes are not a personal liability of the taxpayer. In the other taxing districts, the owners of real property are not personally liable for the taxes thereon.

g. The said Chapter 10 provides for interest at the rate [133] of six per cent (6%) per year with no penalty upon delinquent taxes on property outside municipalities, independent and incorporated school districts and public utility districts. The Juneau and Douglas Independent School Districts impose a twelve per cent (12%) penalty with no interest on delinquent taxes, and the Fairbanks Independent School District imposes a penalty of ten per cent (10%) on delinquent taxes with interest at six per cent (6%) on both tax and penalty.

## VI.

That plaintiff has no boats or vessels; that intervenor had six boats in the Juneau Independent School District engaged in marine service on a commercial basis, as follows:

	Value	Tax
Tug Trojan, 43 tons at \$4.00 .....		\$172.00
Minetender Amy, 22 tons at \$4.00 .....		88.00
Scow No. 1, 22 tons .....	\$ 100.00	1.00
Scow No. 3, 271 tons .....	1,000.00	10.00
Scow No. 4, 271 tons .....	1,000.00	10.00
Scow No. 5, 271 tons .....	1,000.00	10.00

That intervenor elected to have such boats valued and taxed as aforesaid and paid said taxes voluntarily on January 20, 1950, two days after the motion for a preliminary injunction against defend-

ant Mullaney was filed herein on behalf of the intervenor.

Based on the foregoing Findings of Fact, the Court makes the following

### Conclusions of Law

#### I.

That neither the plaintiff nor the intervenor is in a position to assert that Chapter 88 of the Session Laws of Alaska, 1949, is invalid so this Court will not consider whether said Chapter 88 is valid or invalid. What is said hereinafter is said [134] as to property other than boats or vessels.

#### II.

That plaintiff and intervenor have no adequate remedy at law and the enforcement of Chapter 10, Session Laws of Alaska, 1949, would have resulted in irreparable injury to plaintiff and intervenor, and that the bringing of this action prevented a multiplicity of actions.

#### III.

That the tax levied by said Chapter 10 on unimproved, unpatented mining claims which are not producing, and upon unimproved, non-producing patented mining claims upon which the improvements originally required for patent have become useless through deterioration, removal or otherwise, is contrary to Section 9 of the Organic Act of the Territory of Alaska, as amended by the Act of Congress of June 3, 1948, and is therefore invalid as not

valuing said claims according to their full and true value, nor at the price paid the United States therefor, nor at a flat rate fixed by the legislature.

#### IV.

That the tax levied by Chapter 10, Session Laws of Alaska, 1949, and attempted to be collected by defendant M. P. Mullaney, Commissioner of Taxation, on any of the property of the plaintiff and intervenor, other than boats, is invalid, as not being valued and uniform as required by Section 9 of the Organic Act of the Territory of Alaska, and as being a taking of property without due process of law, forbidden by the Fifth Amendment to the Constitution of the United States of America.

#### V.

The last sentence in Section 11 of said Chapter 10 [135] provides that "the true value of property shall be that value at which the property would generally be taken in payment of a just debt from a solvent debtor," and the same is contrary to the provisions of Section 9 of the Organic Act of the Territory of Alaska, and is invalid.

#### VI.

That the tax levied by said Chapter 10 impressed a lien before the filing of this action upon the property of the plaintiff for the sum of \$680.13, and on the property of the intervenor in the sum of \$703.00, for the year 1949; that such liens constitute a cloud

on the title of the plaintiff to his properties and on the title of the intervenor to its properties, situate in the Territory of Alaska outside of municipalities, independent and incorporated school districts, and public utility districts, which cloud plaintiff and intervenor are legally entitled to have removed herein.

## VII.

That the temporary injunction heretofore issued in this cause restraining the defendant M. P. Mullaney, Commissioner of Taxation, and his agents, deputies, official representatives, and all persons acting under him, from enforcing the provisions of Chapter 10, Session Laws of Alaska, 1949, against the property (other than boats and vessels) of plaintiff and intervenor herein, should be made permanent and the bonds given pursuant to the requirement of the preliminary injunction exonerated and the sureties thereon discharged.

## VIII.

That no cause of action was shown against the defendants other than defendant M. P. Mullaney, Commissioner of Taxation [136] and this case should be dismissed as to them.

## IX.

That defendant Liese made no appearance and had no costs; that the other defendants, other than said M. P. Mullaney, Commissioner of Taxation, are entitled to recover their costs and disbursements, other than attorneys' fees, from plaintiff and inter-

venor; that plaintiff and intervenor and defendant M. P. Mullaney shall pay their own costs and disbursements.

Dated at Fairbanks, Alaska, this 1st day of August, 1950.

/s/ HARRY E. PRATT,  
District Court Judge.

Copy received this 1st day of August, 1950.

/s/ CHAS. J. CLASBY,  
Of Counsel for Plaintiff and  
Intervenor.

/s/ MIKE STEPOVICH, JR.,  
Attorney for City of  
Fairbanks.

/s/ MAURICE T. JOHNSON,  
Attorney for Fairbanks School District and the  
Board of Directors.

[Endorsed]: Filed August 1, 1950. [137]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that M. P. Mullaney, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment and decree entered in this action on the 1st day of August, 1950.

J. GERALD WILLIAMS,  
Attorney General of Alaska.

/s/ JOHN H. DIMOND,  
Assistant Attorney General, Attorneys for Defendant-Appellant, M. P. Mullaney.

[Endorsed]: Filed August 7, 1950. [141]

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In the District Court for the Territory of Alaska,  
Fourth Judicial Division  
No. 6352

LUTHER C. HESS.

Plaintiff,

vs.

M. P. MULLANEY, Commissioner of Taxation,  
Territory of Alaska, et al.,

Defendants.

ALASKA JUNEAU GOLD MINING CO., a Corporation,

Intervenor.



## AMENDED JUDGMENT AND DECREE

This cause having come on regularly for trial before the Court on May 15, 1950, on the complaint of plaintiff and the complaint in intervention of intervenor, and the amended answer of defendant, M. P. Mullaney, Tax Commissioner and the answers of the defendants, City of Fairbanks, Alaska, a municipal corporation and Fairbanks School District, an independent school district corporation, and L. F. Joy, Frank Conway, A. F. Coble and Frank P. DeWree to the plaintiff's complaint, and the amended answer of defendant, M. P. Mullaney, Commissioner of Taxation, to the complaint in intervention of the intervenor (the defendant William Liese, Tax Assessor, having made no appearance herein, and the defendants City of Fairbanks, Alaska, a municipal corporation, Fairbanks School District, and the defendants L. F. Joy, Frank Conway, A. F. Coble and Frank P. DeWree, Directors of the Fairbanks School District, having filed no answer to the Complaint in Intervention), and plaintiff and intervenor being represented by their attorneys, Faulkner, Banfield & Boochever, Edward F. Medley and Charles J. Clasby, and the defendant, M. P. Mullaney, Commissioner of Taxation, being represented by his attorneys, J. Gerald Williams, Attorney General of Alaska, and John H. Dimond, Assistant Attorney General of Alaska, and the City of Fairbanks by its attorney, Mike Stepovich, Jr., and the Fairbanks School District and its Directors by their attorney, Maurice T. Johnson;

and evidence having been adduced before the Court on behalf of plaintiff, intervenor and the defendant, M. P. Mullaney, Commissioner of Taxation of Alaska, and arguments having been made by respective counsel for plaintiff, intervenor and defendant, M. P. Mullaney, and the cause having been submitted for judgment on May 15, 1950, and the Court having taken the [138] matter under advisement on that date and having thereafter, on the 19th day of June, 1950, rendered its written opinion which was on that day filed with the Clerk of the Court, and the Court having made and filed herein its Findings of Fact and Conclusions of Law.

It Is Hereby Ordered, Adjudged and Decreed:

1. That the defendant, M. P. Mullaney, as Commissioner of Taxation, Territory of Alaska, and his agents, officers and employees, and his and their successors, be, and they hereby are, enjoined permanently from collecting from plaintiff or from the intervenor the tax imposed by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, upon property, other than boats and vessels, owned by them in the Territory of Alaska, outside municipalities, independent or incorporated school districts, and public utility districts, and from attempting to make collection thereof hereafter;

2. That the defendant, M. P. Mullaney, Commissioner of Taxation, be, and he is hereby, ordered and directed to strike from the tax roll of real and personal property for the year 1949, property,

other than boats and vessels, situate in the Territory of Alaska, outside of municipalities, independent and incorporated school districts, and public utility districts, and owned by plaintiff and the intervenor, against which a tax has been levied pursuant to the said Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Sessions Laws of Alaska, 1949.

It Is Further Ordered That the bonds heretofore filed by the plaintiff and by the intervenor on January 30, 1950, in the sum of \$1,000.00 each, upon the issuance of the preliminary [139] injunction on that date, be, and they are each hereby exonerated and the sureties thereon are relieved of all further liability; and

It Is Further Ordered that this action as against the City of Fairbanks, a municipal corporation, and the Fairbanks School District, an independent school district corporation, and L. F. Joy, Frank Conway, A. F. Coble and Frank P. DeWree, Directors of the Fairbanks School District, and William Liese, Tax Assessor for the Fourth Judicial Division of Alaska, defendants, be and it is hereby dismissed, as to such defendant, and that such defendants, other than M. P. Mullaney and William Liese, recover from the plaintiff and the intervenor their costs and disbursements herein, not including any attorney's fees, and that no further costs be allowed to any party in this action.

This amended judgment and decree shall supercede the judgment and decree hereinbefore filed and shall be effective as of the first day of August, 1950.

Dated at Fairbanks, Alaska, this 8th day of August, 1950.

/s/ HARRY E. PRATT,  
District Court Judge.

Copy received this 8th day of August, 1950.

/s/ CHAS. J. CLASBY,  
Of Counsel for Plaintiff and  
Intervenor.

Entered Aug. 8, 1950.

[Endorsed]: Filed August 8, 1950. [140]

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[Title of District Court and Cause.]

#### STIPULATION RE SUMMARY OF EVIDENCE

It is hereby stipulated and agreed by and between Faulkner, Banfield and Boochever, attorneys for above named plaintiff and intervenor, and John H. Dimond, Assistant Attorney General, attorney for defendant, M. P. Mullaney, that the following described documents offered and admitted in evidence in full at the trial of this cause on the 15th day of May, 1950, (shown on page 2 of the Reporter's Transcript of Record) as plaintiff's and intervenor's exhibits numbered 5, 6, 7, 8, 9, 11, 12 and 14, may be considered as having been read into evidence in their entirety at the time they were so offered and admitted therein:

Plaintiff's and Intervenor's Exhibit No. 5, con-

sisting of the affidavit of January 9, 1950, of C. L. Popejoy, Clerk of the City of Juneau. Attached thereto is a copy of the property tax ordinance of the City of Juneau, together with excerpt from the minutes of the meeting of October 21, 1949, of the Common Council of the City of Juneau.

Plaintiff's and Intervenor's Exhibit No. 6, consisting of the affidavit of January 9, 1950, of Mrs. Daniel Livie, Clerk of the Juneau Independent School District. Attached thereto is a copy of the property tax ordinance of the Juneau Independent School District, together with extracts of the minutes of the special meeting of August 19, 1949, of the Board of Directors of the Juneau Independent School District.

Plaintiff's and Intervenor's Exhibit No. 7, consisting of the affidavit of May 4, 1950, of Mrs. Daniel Livie, Clerk of the Juneau Independent School District.

Plaintiff's and Intervenor's Exhibit No. 8, consisting of the affidavit of January 9, 1950, of Celia A. Wellington, Clerk and Tax Collector of the

Douglas Independent School District. Attached thereto is a copy of the property tax ordinance of the Douglas Independent School District, together with extract from the minutes of the regular meeting of October 5, 1949, of the Board of Directors of the Douglas Independent School District.

Plaintiff's and Intervenor's Exhibit No. 9, consisting of the affidavit of January 9, 1950, of A. J. Balog, [41] City Clerk, Tax Assessor, Tax Collector and Treasurer of the City of Douglas. Attached thereto is the property tax ordinance of the City of Douglas, together with the minutes of the regular meeting of September 12, 1949, of the Common Council of the City of Douglas.

Plaintiff's and Intervenor's Exhibit No. 11, consisting of the affidavit of January 17, 1950, of E. A. Tonseth, Clerk of the City of Fairbanks. Attached thereto is the property tax ordinance of the City of Fairbanks.

Plaintiff's and Intervenor's Exhibit No. 12, consisting of Resolutions of the Common Council of the City of Fairbanks, of September 26, 1949, and October 10, 1949.

Plaintiff's and Intervenor's Exhibit No. 14, consisting of the affidavit of January 17, 1950, of Frank Conway, Clerk of the Fairbanks Independent School District. Attached thereto are three resolutions of the Fairbanks Independent School District.

And it is further stipulated and agreed that the attached documents entitled:

Property Tax Ordinance of the City of Juneau,

which consists of a summary of plaintiff's and intervenor's Exhibit No. 5.

Tax Ordinance of the Juneau Independent School District, which consists of a summary of plaintiff's and intervenor's Exhibits Nos. 6 and 7.

Tax Ordinance of the Douglas Independent School District, which consists of a summary of plaintiff's and intervenor's Exhibit No. 8.

Property Tax Ordinance of the City of Douglas, which consists of a summary of plaintiff's and intervenor's Exhibit No. 9.

Property Tax Ordinance of the City of Fairbanks, which consists of a summary of plaintiff's and intervenor's Exhibits Nos. 11 and 12.

Tax Resolution of the Fairbanks Independent School District, which consists of a summary of plaintiff's and intervenor's Exhibit No. 14.

are material evidence and a true statement of the material portions of said exhibits, and may be regarded as true by the United States Court of Appeals for the Ninth Circuit and deemed by said Court [42] to be part of the record of this case, without the necessity of transcribing and printing said exhibits in full.

Dated at Juneau, Alaska, this 9th day of August, 1950.

FAULKNER, BANFIELD  
& BOOCHEVER,  
MEDLEY & HAUGLAND,  
CHARLES J. CLASBY,  
Attorneys for Plaintiff  
And Intervenor.

/s/ JOHN H. DIMOND,  
Attorney for Defendant,  
M. P. Mullaney.

Order

Approved this...day of....., 1950, and Ordered, when filed in the office of the Clerk of this Court, to supersede, for the purposes of the appeal herein, plaintiff's and intervenor's Exhibits Nos. 5, 6, 7, 8, 9, 11, 12 and 14; and further

Ordered to be copied, together with other portions of the record in this case designated by the parties, and certified to the United States Court of Appeals for the Ninth Circuit as part of the record on appeal herein.

Dated at Fairbanks, Alaska, this...day of ....., 1950.

.....,  
District Judge [43]

Property Tax Ordinance of the City of Juneau Ordinance No. 329 of the City of Juneau, Alaska, passed and approved May 20, 1949, provides for the assessment, levy and collection of taxes and for the sale of property, both real and personal, for delinquent taxes, penalties, interest and costs.

(1) Rate of Tax

On the third Friday in October of each year, or as soon thereafter as possible, the Common Council shall fix the rate of tax levy for the year, designat-



ing the number of mills on each dollar of assessed value of the property, real and personal, for school and municipal purposes, and also any millage rate assessed by the city for the Territory of Alaska. At a meeting of the Common Council held on October 21, 1949, taxes for 1949 were levied on all real and personal property within the City of Juneau at a tax rate of 20 mills, which was the same as the tax rate for the year 1948. No other taxes were levied for 1949.

## (2) Property Subject to Taxation

All property, both real and personal and of every kind and nature not exempt under this Ordinance, is subject to taxation for school and municipal purposes. It is provided further that "personal property" shall include all property defined or held to be such under the laws of the Territory.

## (3) Exemptions

All property of the United States of America, the Territory of Alaska and the City of Juneau, and the household furniture of the head of a family or a householder, not exceeding \$200.00 in value, as well as all property used exclusively for religious, educational and charitable purposes, and the property of any organization, not [44] organized for business purposes, whose membership is composed entirely of the veterans of any wars of the United States, and the property of the auxiliary of any

such organization and all monies on deposit, shall be exempt from taxation; provided that if any organization composed of veterans or its auxiliary derives any rentals or profits from any such property owned by it or them, such property shall not be exempt.

#### (4) Assessment

Assessment is based on the actual value of the property and is to be assessed to the owner or claimant thereof as of 12 o'clock noon on June 1 of each year.

#### (5) When Taxes Become Delinquent

Taxes will be delinquent after 4 o'clock p.m. of the 15th day of November of each year unless one-half of the taxes assessed shall have been paid on or before that time; provided that the remaining one-half of said taxes shall not become delinquent until after 4 o'clock p.m. of the 15th day of May of the year following.

#### (6) Discount

If the taxes on any real or personal property are paid in full on or before 4 o'clock p.m. of November 15 of the year in which they are assessed and levied, a discount of 2% shall be allowed on such taxes so paid.

#### (7) Penalty and Interest

On all delinquent taxes a penalty shall be imposed and added which shall be a sum equal to 15% of the taxes assessed, and interest shall be added on

the delinquent taxes and penalty owing at the rate of 12% per annum from [45] the date of delinquency.

### (8) Lien Provisions

All taxes levied under this Ordinance constitute a lien upon all the property assessed, both real and personal when the assessment is completed, which must be on or before the second Tuesday in October of the year of levy, and such lien shall be prior and paramount to all other liens and encumbrances against the property assessed. On or before the 15th day of June of each year, the City Clerk shall make up a roll in duplicate of all property assessed on which the tax has not been paid and is delinquent. As soon as convenient after completion of said delinquent tax roll, the City Clerk shall cause to be published in a newspaper of general circulation in the City of Juneau once each week for a period of four successive weeks, a notice setting forth that the delinquent tax roll of real property has been completed and is open for public inspection at the office of the City Clerk and that on a certain day not less than 30 days after the completion of the publication of such notice, the said roll will be presented to the District Court for the First Judicial Division, Territory of Alaska, at Juneau, for judgment and order of sale. During the time of the publication and up to the time of the order of sale, any person may appear and make payment of the taxes due, plus penalty and interest. The sale of real property for taxes ordered by the said

Court shall be made according to the provisions of §§16-1-127—16-1-128 ACLA 1949. After the delinquent tax roll is filed with the court, any taxpayer having any interest in any tract therein listed, may appear and have a hearing on his objections. [46]

#### (9) Redemption

Any real property sold for delinquent taxes is subject to redemption within a period of two years from the date of sale, as provided by §§16-1-129—16-1-130 ACLA 1949.

#### (10) Personal Liability

The owner of all personal property assessed shall be personally liable for the amount of taxes against his personal property, and such tax, together with penalty and interest, may be collected after the same becomes due in a personal action brought in the name of the City of Juneau against such owner in the courts of the Territory of Alaska or in any other manner now or hereafter provided by law. The lien of personal property taxes may also be enforced by distraint and sale of the personal property of the person assessed.

#### (11) Equalization

The Common Council meets as a Board of Equalization on the second Monday in September of each year for not less nor more than seven days for the purpose of examining the assessment list, for the purpose of hearing complaints and protests of tax-

payers and for the purpose of equalizing and revising assessments where such is necessary. Said board has power to raise or lower the value of any property, real or personal, which it may deem not equally or uniformly assessed or not assessed at its actual value. Any person desiring a reduction or change in the assessment of property assessed to him shall make application, either in writing or in person, to the Board of Equalization for such reduction. [47]

Tax Ordinance of the Juneau Independent  
School District

Ordinance No. 11 of the Juneau Independent School District provides for the assessment, levy and collection of taxes and for the sale of property, both real and personal, for the payment of taxes, penalty, interest and costs.

(1) Rate of Tax

The Board of Directors of the Juneau Independent School District shall meet on the Friday next after the adjournment of the Board of Equalization and fix the rate of tax levy for the year, designating the number of mills levied on each dollar of assessed property, real and personal, within the district and outside the corporate limits of the City of Juneau, Alaska, for school purposes, as equalized by the Board of Equalization for that year. At a meeting of the board held on August 19, 1949, the school tax levy for the school year 1949-1950 was set at 10 mills. Of this amount 7

mills was used for school purposes within the school district and the remaining 3 mills was turned over to the Territory of Alaska pursuant to the provisions of the Alaska Property Tax Act. The rate of taxation for the year 1948-1949 was 7 mills.

## (2) Property Subject to Taxation

All property within that portion of the school district lying outside the incorporated city of Juneau, Alaska, both real and personal of every nature, not exempt under the laws of the United States or the Territory of Alaska, is subject to taxation for school purposes. It is provided further that the term "personal property" shall include all property defined as such by the laws of the Territory of [48] Alaska.

## (3) Exemptions

The following property is exempt: All property belonging to the municipality or the Territory, all property exempt under the laws of the United States, and the household furniture of the head of the family or a householder, not exceeding \$200 in value, as well as all property used exclusively for religious, educational, charitable purposes and the property of any organization, not organized for business purposes, whose membership is composed entirely of veterans of any wars of the United States, or the property of the Auxiliary of any such organization and all monies on deposit, provided that if any organization composed of veterans or its auxiliary derives any rentals or profits from any

such property owned by it or them, such property shall not be exempt.

#### (4) Assessment

The assessor must between the first Friday in May and the second Monday in July of each year, list all property subject to taxation for school purposes, and he must assess such property at its just and fair value to the person, partnership or corporation by whom it is claimed or owned or in whose possession or under whose control it was at 12 o'clock midnight on the first day of June of the same year. All assessments shall be equal and uniform and based upon the actual value of the property assessed.

#### (5) When Taxes Become Delinquent

On the first day of October of each year at 6 o'clock p.m. all unpaid taxes shall become delinquent, provided, however, that if one-half of the assessed taxes shall have [49] been paid on or before the said first day in October of each year before the hour of 6 o'clock p.m., the remaining one-half of said assessed taxes shall not become delinquent until the first day of March of the following year at the hour of 6 o'clock p.m.

#### (6) Discount

If the taxes on any real or personal property are paid in full on or before the first day of October at 6 o'clock p.m. of the year in which they are assessed and levied, a discount of 2% shall be allowed on such taxes.

## (7) Penalty and Interest

On all delinquent taxes a penalty shall be added which shall be a sum equal to interest at the rate of 12% per annum on the sum delinquent from the date of such delinquency until such taxes are paid.

## (8) Lien Provisions

All taxes levied under this ordinance shall be a lien upon all the property assessed and shall be prior and paramount to all other liens and encumbrances against the said property. The said lien shall attach upon the assessment being made, which shall be on or before August 1 of each year. On or before the first day of June of each year, the clerk shall make up a delinquent tax roll, which shall be filed with the clerk and be open to the inspection of the public. As soon as said delinquent tax roll is filed, the clerk shall cause to be published in a newspaper of general circulation published within the district, once each week for a period of four successive weeks, a notice setting forth that the delinquent tax roll has been [50] completed and is open for public inspection and that the said roll will be presented to the District Court for the Territory of Alaska, Division No. 1 at Juneau, for judgment and order of sale. During the period of publication of such notice and up to the time of the order of sale, any person may appear and make payment of delinquent taxes, together with penalty and interest. After said publication is completed, the delinquent tax roll shall be presented to the District Court for an order of sale



of all the real property therein listed, and the proceedings with reference to the notice of sale, sale of the property and execution of certificates and deeds shall be as provided by the laws of the Territory of Alaska. (§37-3-53 ACLA 1949). After the delinquent tax roll is filed with the court, the owner of the property assessed and on which a reduction is sought, or someone on his behalf, may appear before the court and have a hearing on his objections, provided that he shall have appeared and presented his objections before the Board of Equalization for the year in which the assessment in question shall have been made.

#### (9) Redemption

Any real property sold for delinquent taxes is subject to redemption for a period of two years from the date of sale.

#### (10) Personal Liability

The owner of all personal property assessed shall be personally liable for the amount of taxes assessed against his personal property, and such tax, together with penalty and interest, may be collected in a personal action brought in the name of the Board against such owner in the courts of the Territory. A lien of personal property taxes may also be [51] enforced by distraint and sale of the personal property of the person assessed.

## (11) Equalization

The Board shall meet as a Board of Equalization on the third Monday of August of each year and shall examine the assessment list, shall equalize and revise the assessment when such is necessary, and shall hear any complaints and protests which may be made on the part of taxpayers or owners of the property assessed. The Board shall continue in session for not less than three nor more than seven days. Any person desiring a reduction in the assessment of any property assessed to him shall make application to the Board of Equalization for such reduction either in writing or in person. [52]

Tax Ordinance of the Douglas Independent  
School District

Ordinance No. II of the Douglas Independent School District provides for the assessment, levy and collection of taxes and for the sale of property, both real and personal, for the payment of taxes, penalty, interest and costs.

## (1) Rate of Tax

The Board of Directors of the Douglas Independent School District shall meet on the Friday next after the adjournment of the Board of Equalization and fix the rate of tax levy for the year, designating the number of mills levied on each dollar of assessed property, real and personal, within the district and outside the corporate limits of the City of Douglas, Alaska, for school purposes, as equalized by the Board of Equalization for that year. At a meeting

of the Board held on October 5, 1949, a real and personal property tax of 10 mills was levied for the year 1949. The rate of taxation for the year 1948 was 12 mills.

## (2) Property Subject to Taxation

All property within that portion of the school district lying outside the incorporated city of Douglas, Alaska, both real and personal of every nature, not exempt under the laws of the United States or the Territory of Alaska, is subject to taxation for school purposes. It is provided further that the term "personal property" shall include all property defined as such by the laws of the Territory of Alaska.

## (3) Exemptions

The following property is exempt: All property belonging to the municipality or the Territory, all property exempt under the laws of the United States, and the household furniture of the head of the family or a householder, [53] not exceeding \$200 in value, as well as all property used exclusively for religious, educational or charitable purposes, and the property of any organization, not organized for business purposes, whose membership is composed entirely of veterans of any wars of the United States, or the property of the auxiliary of any such organization and all monies on deposit, provided that if any organization composed of veterans or its auxiliary derives any rentals or profits from any such property owned by it or them, such property shall not be exempt.

## (4) Assessment

The assessor must between the first Friday in May and the second Monday in July of each year, list all property subject to taxation for school purposes, and he must assess such property at its just and fair value to the person, partnership or corporation by whom it is claimed or owned or in whose possession or under whose control it was at 12 o'clock midnight on the first day of June of the same year. All assessments shall be equal and uniform and based upon the actual value of the property assessed.

## (5) When Taxes Become Delinquent

On the first day of October of each year at 6 o'clock p.m. all unpaid taxes shall become delinquent, provided, however, that if one-half of the assessed taxes shall have been paid on or before the said first day in October of each year before the hour of 6 o'clock p.m., the remaining one-half of said assessed taxes shall not become delinquent until the first day of March of the following year at the hour of 6 o'clock p.m. [54]

## (6) Discount

If the taxes on any real or personal property are paid in full on or before the first day of October at 6 o'clock p.m. of the year in which they are assessed and levied, a discount of 2% shall be allowed on such taxes.

## (7) Penalty and Interest

On all delinquent taxes a penalty shall be added

which shall be a sum equal to interest at the rate of 12% per annum on the sum delinquent from the date of such delinquency until such taxes are paid.

### (8) Lien Provisions

All taxes levied under this ordinance shall be a lien upon all the property assessed and shall be prior and paramount to all other liens and encumbrances against the said property. The said lien shall attach upon the assessment being made, which shall be on or before August 1 of each year. On or before the first day of June of each year, the clerk shall make up a delinquent tax roll, which shall be filed with the clerk and be open to the inspection of the public. As soon as said delinquent tax roll is filed, the clerk shall cause to be published in a newspaper of general circulation published within the district, once each week for a period of four successive weeks, a notice setting forth that the delinquent tax roll has been completed and is open for public inspection and that the said roll will be presented to the District Court for the Territory of Alaska, Division No. 1 at Juneau, for judgment and order of sale. During the period of publication of such notice and up to the time of the order of sale, any person [55] may appear and make payment of delinquent taxes, together with penalty and interest. After said publication is completed, the delinquent tax roll shall be presented to the District Court for an order of sale of all the real property therein listed, and the proceedings with reference to the notice of sale, sale of the property and execution of certificates and

deeds shall be as provided by the laws of the Territory of Alaska. (§37-3-53 ACLA 1949). After the delinquent tax roll is filed with the court, the owner of the property assessed and on which a reduction is sought, or someone on his behalf, may appear before the court and have a hearing on his objections, provided that he shall have appeared and presented his objections before the Board of Equalization for the year in which the assessment in question shall have been made.

#### (9) Redemption

Any real property sold for delinquent taxes is subject to redemption for a period of two years from the date of sale.

#### (10) Personal Liability

The owner of all personal property assessed shall be personally liable for the amount of taxes assessed against his personal property, and such tax, together with penalty and interest, may be collected in a personal action brought in the name of the Board against such owner in the courts of the Territory. A lien of personal property taxes may also be enforced by distraint and sale of the personal property of the person assessed.

#### (11) Equalization

The Board shall meet as a Board of Equalization on the [56] third Monday of August of each year and shall examine the assessment list, shall equalize and revise the assessment when such is necessary,

and shall hear any complaints and protests which may be made on the part of taxpayers or owners of the property assessed. The Board shall continue in session for not less than three nor more than seven days. Any person desiring a reduction in the assessment of any property assessed to him shall make application to the Board of Equalization for such reduction either in writing or in person. [57]

Property Tax Ordinance of the City of Douglas

Ordinance No. 9 of the City of Douglas, Alaska, passed and approved on July 25, 1938, as amended by the Council at a meeting held September 12, 1949, providing for the assessment, levy and collection of taxes on real and personal property within the City of Douglas, Alaska.

### (1) Rate of Tax

The common council of the City of Douglas, at its first meeting in August of each year shall fix the rate of city tax, designating the number of mills on each dollar of taxable property within the city. At a meeting of said council held on September 12, 1949, taxes were levied on all real and personal property within the City of Douglas at a tax rate of 15 mills. No other taxes were levied for that year.

### (2) Property Subject to Taxation

All property within the City of Douglas not exempt under the laws of the United States or this ordinance is subject to taxation for municipal purposes.

### (3) Exemptions

Household goods of each householder or head of a family, not exceeding \$200 in value, all property belonging to the municipality, and all property used exclusively for religious, educational and charitable purposes.

### (4) Assessment

Property is assessed to the person by whom it was owned or claimed or in whose possession or control it was at 12 o'clock noon on the first day of June of each year, and the assessment shall conform to the true value of such property in money. [58]

### (5) When Taxes Become Delinquent

Taxes are delinquent after November 15 of the year of taxation, unless one-half of the taxes shall have been paid before that date; provided that the remaining one-half of said taxes shall not become delinquent until after March 15 of the ensuing year.

### (6) Discount

A discount of 2% will be allowed if taxes are paid before delinquent.

### (7) Penalty and Interest

The Ordinance provides for 5% penalty on delinquent taxes with no interest. However, at a meeting of the city council held September 12, 1949, a resolution was adopted providing for 10% penalty and 8% interest on delinquent taxes.



(8) Lien Provisions

All taxes assessed and levied under this Ordinance shall be a preferred lien on the property so taxed and shall attach in the month of August of the year of levy, which lien shall be foreclosed and the property sold as provided by Ch. 44 C.L.A. 1933 (§§16-1-121—16-1-128 ACLA 1949).

(9) Redemption

Any real property sold for delinquent taxes is subject to redemption within a period of two years from the date of sale, as provided by §§16-1-129—16-1-130 ACLA 1949.

(10) Personal Liability

The tax ordinance of the City of Douglas does not make any specific provision imposing any personal liability on a taxpayer for failure to pay taxes on real or personal [59] property; however, the ordinance does provide that personal property may be seized and sold for delinquent taxes.

(11) Equalization

The Common Council shall meet as a Board of Equalization on the first Monday of August of each year and continue in session until the following Wednesday, to examine the assessment book and equalize the assessments of property in the City of Douglas. Said board may, after giving three days notice to parties interested, increase or lower any assessment contained in the assessment roll so as to

equalize the assessment of property contained in said roll and make the assessment conform to the true value of property in money. Any person desiring a reduction on the assessment of his property shall file with the board of equalization a written application therefor. Any person dissatisfied with the final decision of the board of equalization may appeal from this decision to the United States District Court for the Territory of Alaska, Division Number One, within thirty days from the time of the rendition of the said decision. [60]

Property Tax Ordinance of the City of Fairbanks Ordinance No. 384 of the City of Fairbanks, Alaska, passed and approved on February 13, 1946, providing for the assessment, levy and collection of taxes on real and personal property within the City of Fairbanks, Alaska.

#### (1) Rate of Tax

The Common Council of the City of Fairbanks shall at its first regular meeting after it shall have completed equalization of the assessment rolls, or at a special meeting called for that purpose, levy a tax on all taxable property in the city, as shown by the assessment rolls, not to exceed 2% of the assessed valuation thereof as equalized. At a meeting of the council held September 26, 1949, a tax for school and municipal purposes upon all taxable real and personal property in the City of Fairbanks was levied at a rate of 20 mills, in addition to the 1% territorial general property tax. This resolution was amended at a subsequent meeting of the council held

October 10, 1949, at which time the tax provided to be levied for school and municipal purposes under the provisions of Ordinance No. 384 was set at a rate of 20 mills and the tax under the territorial general property tax law was set at the rate of 0 mills. The rate of taxation on all real and personal property was the same for 1949 as it was for the year 1948.

## (2) Property Subject to Taxation

All real and personal property situated in the City of Fairbanks and all personal property used in connection with or in the carrying on of any business or occupation conducted in said city, whether said personal property be therein situated or not, is subject to taxation for school and [61] municipal purposes, except such property as is expressly exempted by law. It is provided that personal property shall be construed to include, embrace and mean, without especially defining or enumerating it, all goods, bonds, franchises, chattels, monies and legal tender of all description, including national bank notes, gold and silver certificates and all government medium of exchange commonly known and designated as "paper money" or "currency," capital stock of corporations and shares in incorporated companies, and all improvements on lands held under lease, or otherwise, from another.

A special method is provided in the ordinance for assessing individuals, firms, corporations or associations carrying on a general banking business. It is provided that every year at such times as provided

for the listing of property for taxation, every such bank shall by its accounting officer furnish the city assessor a statement verified by oath giving the amount of paid up stock, the amount of surplus reserve fund and the amount of undivided profits of such bank. The aggregate amount of capital, surplus and undivided profits shall be assessed and taxed as other like property in Fairbanks is assessed and taxed. Provided, that at the time of listing the capital stock, the amount and description of its legally authorized investments is assessed and taxed under this ordinance, and the assessor shall deduct the amount of such assessment of real estate from the amount of such capital, surplus and undivided profits, and the remainder shall then be taxed as above provided.

### (3) Exemptions

The following property is exempt from taxation: All property belonging to the Town of Fairbanks, Alaska; all property used exclusively in said Town for religious, educational or charitable purposes; all property belonging to the United States of America; all property belonging to the Territory of Alaska; all household furniture or effects of the head of a family or household; not exceeding in value the sum of \$200; all property of any organization composed entirely of veterans of any wars of the United States or the property of the auxiliary of any such organization, and all moneys owned by them and on deposit in any bank, provided that if any such organization or auxiliary shall derive any rental or

profits from any such property, such property shall not be exempt from taxation.

(4) Assessment

All property shall be assessed at its true and fair value in money. In determining the true and fair value of real and personal property, the assessor shall value such property at such sum or price as he believes it to be fairly worth in money at the time such assessment is made. The assessed value of property shall be fixed with reference to the first day of October of each year.

(5) When Taxes Become Delinquent

All taxes are due and payable on the first day of October of each year, and if not paid on or before the 15th day of October of such year, are delinquent; provided, however, that if one-half of the amount of such taxes is paid on or before October 15, the remaining half shall not be deemed to be delinquent but may be paid at any time before the end of [63] March 31 of the following year.

on delinquent taxes.

(6) Discount

No discount is allowed.

(7) Penalty and Interest

A 10% penalty and 10% interest shall be charged on delinquent taxes.

## (8) Lien Provisions

A lien for unpaid taxes attaches on the first day of October of the year of levy.

## (9) Redemption

Ordinance No. 384 contains no provisions with respect to redemption of property sold for unpaid taxes.

## (10) Personal Liability

Ordinance No. 384 contains no provisions with respect to imposition of any personal liability on a taxpayer for failure to pay taxes.

## (11) Equalization

The Common Council of the City of Fairbanks shall equalize the assessment rolls each year. [64]

Tax Resolution of the Fairbanks Independent  
School District

Resolution of the Fairbanks Independent School District, passed and approved October 10, 1947, providing for the levy and collection of taxes and for the sale of property, both real and personal, for the payment of taxes, penalty, interest and costs.

## (1) Rate of Tax

At a meeting of the Board held on September 15, 1949, a tax was levied at the rate of 10 mills for the year beginning October 1, 1949. No other taxes were levied for the year 1949. The rate of taxation for the year 1948 was 6 mills.

## (2) Property Subject to Taxation

All property within the boundaries of the Fairbanks Independent School District located outside the corporate limits of the City of Fairbanks is subject to taxation for school purposes. The term "personal property" shall be considered to include all household goods, effects, furniture, chattels, wares, merchandise, gold dust, goods, money on deposit either within or without the school district corporation, boats or vessels owned or registered within the corporation, capital invested therein, all debts due or to become due from solvent debtors, either on account, contract, note, mortgage or otherwise, all public stocks or stocks or shares in incorporated companies, and all property of every nature and kind not included within the term "real property."

## (3) Exemptions

The following property is exempt: All property belonging to the municipality or the Territory, all property exempt under the laws of the United States, and the household furniture of the head of the family or a householder, not [65] exceeding \$200 in value, as well as all property used exclusively for religious, educational or charitable purposes and the property of any organization, not organized for business purposes, whose membership is composed entirely of veterans of any wars of the United States, or the property of the auxiliary of any such organization and all monies on deposit, provided that if any organization composed of veter-

ans or its auxiliary derives any rentals or profits from any such property owned by it or them, such property shall not be exempt.

#### (4) Assessment

The assessment shall be equal and uniform and shall be based upon the actual value of the property assessed.

#### (5) When Taxes Become Delinquent

All taxes shall be due and payable on the first day of October of the year of levy and delinquent on the 15th day of October of the same year, provided, however, that if one-half of the tax assessed is paid on or before the 15th day of October, the remaining one-half will not become delinquent until the first day of April of the year following. If one-half of the tax assessed is not paid on or before the 15th day of October, then the whole amount of the tax assessed will be delinquent.

#### (6) Discount

No discount is allowed by the Fairbanks Independent School District.

#### (7) Penalty and Interest

A penalty of 10%, together with interest at the rate of 6%, will be charged for delinquent taxes. [66]

#### (8) Lien Provisions

All taxes levied by the district shall constitute a



lien upon all of the property assessed, both real and personal, when the assessment is completed; and the lien for such taxes shall be enforced in accordance with the laws of the Territory of Alaska (§37-3-53 ACLA 1949) and pursuant to specific provisions contained in the property tax resolution of the District, which are as follows: After the taxes shall become due, the assessor shall make up a delinquent tax roll and said roll shall be filed with the assessor or tax collector and remain open to inspection by the public. As soon as convenient after completion of said delinquent tax roll, the assessor shall cause to be published in a newspaper of general circulation in the Fairbanks School District, once each week for a period of four successive weeks, a notice setting forth that the delinquent tax roll of real property has been completed and is open for public inspection and that on a date not less than 30 days after the completion of the said publication, the said roll will be presented to the District Court for the Fourth Judicial Division for judgment and order of sale. During the time of publication and up to the time of the order of sale, any person may appear and make payment of the taxes due, plus penalty and interest. After hearing, the order of sale may be made by the District Court; and after such order of sale has been made, the assessor or tax collector shall make such sale at public auction after notice by publication in a newspaper of general circulation once each week for 4 successive weeks or by posting in three public places in the City of Fairbanks. [67]

## (9) Redemption

All real property sold for delinquent taxes shall be subject to redemption within a period of 2 years from the date of sale.

## (10) Personal Liability

The owner of personal property assessed shall be personally liable for the amount of taxes assessed against his personal property, and such taxes, together with penalty and interest, may be collected after the same becomes due in a personal action brought in the name of the Fairbanks Independent School District against such owner in the courts of the Territory. The lien of personal property taxes may also be enforced by distraint and sale of the personal property of the person assessed.

## (11) Equalization

The Board of Directors of the Fairbanks Independent School District shall sit as an equalization board on the 21, 22 and 23 days of September.

[Endorsed]: Filed August 14, 1950. [68]

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[Title of District Court and Cause.]

Stipulation Re Reporter's Transcript of Evidence

It is hereby stipulated and agreed by and between Faulkner, Banfield and Boochever, attorneys for above named plaintiff and intervenor, and John H. Dimond, Assistant Attorney General, attorney for

defendant, M. P. Mullaney, that the following described exhibits, offered and admitted in evidence at the trial of this cause on the 15th day of May, 1950, (as shown on page 2 of the Reporter's Transcript of Record), are a portion of the said Reporter's Transcript of Record; that the same may be considered as having been read into evidence in full at the time they were so offered and admitted therein; that the hereto attached papers are true and correct copies of said exhibits and may be filed with the clerk of the above-entitled court without being transcribed by the reporter and filed with the Reporter's Transcript of Record; and that when so filed, the same may be copied by said clerk, together with other portions of the record in this case designated by the parties, and certified to the United States Court of Appeals for the Ninth Circuit as part of the record on appeal herein.

Intervenor's Exhibit No. 1, consisting of the deposition of J. A. Williams.

Plaintiff's and Intervenor's Exhibit No. 4, consisting of the affidavit of January 6, 1950, of Luther C. Hess.

Plaintiff's and Intervenor's Exhibit No. 10, consisting of the affidavit of May 12, 1950, of E. A. Tonseth.

Plaintiff's and Intervenor's Exhibit No. 13, consisting of the affidavit of May 12, 1950, of Roy P. Mathias.

Defendant's Exhibit No. 1A, consisting of deposition of James C. Ryan, together with defendant's exhibit No. 1 attached thereto.

Dated at Juneau, Alaska, this 9th day of August, 1950. [69]

FAULKNER, BANFIELD &  
BOOCHEVER,

MEDLEY & HAUGLAND,  
CHARLES J. CLASBY,

Attorneys for Plaintiff and  
Intervenor.

J. GERALD WILLIAMS,  
Attorney General of Alaska.

/s/ JOHN H. DIMOND,  
Assistant Attorney General, Attorneys for Defendant,  
M. P. Mullaney. [70]

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### INTERVENOR'S EXHIBIT No. 1

Direct Interrogatories Propounded by Intervenor  
and Plaintiff to J. A. Williams a Witness for  
Intervenor and Plaintiff

#### Interrogatory No. 1

Q. Please state your name and address and occupation.

A. J. A. Williams, General Manager, Alaska Juneau Gold Mining Company, Juneau, Alaska.

Interrogatory No. 2

Q. If you have stated that you are General Manager of the Alaska Juneau Gold Mining Company's operations in the Territory, please state where these operations are carried on and in what business the company is engaged.

A. Gold mining and milling operations at Juneau, First Judicial Division, Alaska.

Interrogatory No. 3

Q. Does the Alaska Juneau Gold Mining Company, the intervenor, own real and personal property in the Territory of Alaska, and if so in which Judicial Division and in which taxing units?

A. Yes; in the First Judicial Division, in the cities of Juneau and Douglas and in the Juneau and Douglas Independent School Districts and in the territory outside those units.

Interrogatory No. 4

Q. State generally the nature of the real and personal property owned by the Alaska Juneau Gold Mining Company.

A. Lode mining claims and other real property, buildings, machinery, boats and watercraft, supplies, docks, transmission lines and mining and milling equipment, and power plants. [71]

Interrogatory No. 5

Q. Have various taxing units in the Territory of Alaska levied real and personal property taxes on

the property of Intervenor for the year 1949? If so, state which taxing units have levied these taxes.

A. Yes, the cities of Juneau and Douglas, the Juneau and Douglas Independent School Districts and the Territory itself.

#### Interrogatory No. 6

Q. Did the Intervenor make a return to the Defendant Tax Commissioner of real and personal property owned by it during the year 1949 in the Territory of Alaska outside of incorporated cities and school districts?      A. Yes.

#### Interrogatory No. 7

Q. Where is that property situated, and of what does it generally consist?

A. In the First Judicial Division, Alaska, and consists of mining claims, power plant, transmission lines, buildings and personal property.

#### Interrogatory No. 8

Q. Was the return made by the Intervenor made under protest as alleged in the Complaint in Intervention?      A. Yes.

#### Interrogatory No. 9

Q. Did you receive from the office of the Assessor in Division No. 1, Alaska, a notice of assessment of this property in the Territory outside of incorporated cities and school districts?      A. Yes. [72]

Interrogatory No. 10

Q. If your answer to the last interrogatory is in the affirmative, please attach to the deposition and make a part hereof, such notices of assessment (marked Exhibit A) as the company received.

A. Attached and marked Exhibit A.

Interrogatory No. 11

Q. Has any part of the tax mentioned in that notice of assessment been paid?           A. No.

Interrogatory No. 12

Q. Were any taxes levied in the year 1949 on the property of the Intervenor situated within the City of Juneau, Alaska?           A. Yes.

Interrogatory No. 13

Q. If your answer to the last question is in the affirmative, will you please attach to this deposition and make a part thereof, the list of real and personal property of the Intervenor (marked Exhibit B) upon which taxes were levied and assessed in the year 1949 by the City of Juneau.

A. Attached and marked Exhibit B.

Interrogatory No. 14

Q. Will you please attach to these interrogatories and make a part hereof (Marked Exhibit C) all assessment notices, tax statements and receipts for taxes levied on the company's property within the City of Juneau, Alaska, for the year 1949?

A. Attached and marked Exhibit C. [73]

## Interrogatory No. 15

Q. Have these taxes been paid to the City of Juneau by the Intervenor?      A. Yes.

## Interrogatory No. 16

Q. Were any taxes levied in the year 1949 on the property of the Intervenor situated within the City of Douglas, Alaska?      A. Yes.

## Interrogatory No. 17

Q. If your answer to the last question is in the affirmative, will you please attach to this deposition and make a part thereof, the list of real and personal property of the Intervenor (marked Exhibit D) upon which taxes were levied and assessed in the year 1949 by the City of Douglas?

A. Attached and marked Exhibit D.

## Interrogatory No. 18

Q. Will you please attach to these interrogatories and make a part hereof (marked Exhibit E) all assessment notices, tax statements and receipts for taxes levied on the company's property within the City of Douglas, Alaska, for the year 1949?

A. Attached and marked Exhibit E.

## Interrogatory No. 19

Q. Have these taxes been paid to the City of Douglas by the Intervenor?      A. Yes.



Interrogatory No. 20

Q. Were any taxes levied in the year 1949 on the property of the Intervenor situated within the Juneau Independent School District? [74]

A. Yes.

Interrogatory No. 21

Q. If your answer to the last question is in the affirmative, will you please attach to this deposition and make a part thereof, the list of real and personal property of the Intervenor (marked Exhibit F) upon which taxes were levied and assessed in the year 1949 by the Juneau Independent School District?

A. Attached and marked Exhibit F.

Interrogatory No. 22

Q. Will you please attach to these interrogatories and make a part hereof (marked Exhibit G) all assessment notices, tax statements and receipts for taxes levied on the company's property within the Juneau Independent School District?

A. Attached and marked Exhibit G.

Interrogatory No. 23

Q. Have these taxes been paid to the Juneau Independent School District?      A. Yes.

Interrogatory No. 24

Q. Were any taxes levied in the year 1949 on the property of the Intervenor situated within the

Douglas Independent School District?

A. Yes.

Interrogatory No. 25

Q. If your answer to the last question is in the affirmative, will you please attach to this deposition and make a part thereof, the list of real and personal property of the Intervenor (marked Exhibit H) upon which taxes were levied [75] and assessed in the year 1949 by the Douglas Independent School District?

A. Attached and marked Exhibit H.

Interrogatory No. 26

Q. Will you please attach to these interrogatories and make a part hereof (marked Exhibit I) all assessment notices, tax statements and receipts for taxes levied on the company's property within the Douglas Independent School District?

A. Attached and marked Exhibit I.

Interrogatory No. 27

Q. Have these taxes been paid to the Douglas Independent School District?      A. Yes.

Interrogatory No. 28

Q. Have all the taxes which were levied and assessed against the City of Juneau, City of Douglas, Juneau Independent School District and the Douglas Independent School District been paid in full by the Intervenor for the year 1949?

A. Yes.

Interrogatory No. 29

Q. At what rate or rates were the taxes levied by the cities of Juneau and Douglas and the Juneau and Douglas Independent School Districts?

A. City of Juneau 20 mills; Douglas 15 mills; Juneau Independent School District 10 mills; Douglas Independent School District 10 mills; all less 2% discount for cash.

Interrogatory No. 30

Q. Did each of these taxing units, that is, the two cities and the two Independent School Districts, above mentioned, allow [76] a 2% discount for cash payment? A. Yes.

Interrogatory No. 31

Q. In addition to the taxes levied and assessed, as hereinabove mentioned in the preceding questions and answers, were there taxes levied on certain boats and watercraft of the Intervenor, Alaska Juneau Gold Mining Company, during the year 1949? A. Yes.

Interrogatory No. 32

Q. If you have answered the last interrogatory in the affirmative, please state what taxing unit levied the taxes on the vessels and watercraft.

A. Juneau Independent School District.

Interrogatory No. 33

Q. Do you have a statement from the Juneau

Independent School District showing the levy of these taxes with a statement of the different watercraft, the tonnage and the values placed on these various watercraft, and if so, will you please attach it to the deposition (marked Exhibit J) and make it a part hereof?

A. Attached and marked Exhibit J.

#### Interrogatory No. 34

Q. Are any of the mining claims, either patented or unpatented, belonging to the Intervenor which have been assessed for tax purposes, and against which taxes have been levied by any of the taxing units mentioned in previous interrogatories, including the Territory of Alaska, being operated, or are any of them producing anything at the present time, or have [77] they been so operating or producing at any time during 1949?

A. No.

#### Interrogatory No. 35

Q. Are any of the unpatented mining claims which are described in the assessment notice of the Territory of Alaska, sent you by the Tax Assessor, improved in any way?

A. Our unpatented claims which come under the School District tax rather than the Territorial property tax are nearly all unimproved; however, two or three claims have exploratory tunnels done for assessment work.

Interrogatory No. 36

Q. If any of them are so improved, are the improvements at the present time of any value or have they become useless?

A. Improvements where made are of no value except that they have served for assessment work.

Interrogatory No. 37

Q. Has demand been made upon the Intervenor for the payment of taxes levied and assessed by the Territory of Alaska for the year 1949?

A. Yes.

Interrogatory No. 38

Q. How long is it since the Alaska Juneau Gold Mining Company operated its mine and mill in Juneau; in other words, how long has the property been closed?      A. Exactly six years.

/s/ J. A. WILLIAMS. [78]

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PLAINTIFF'S AND INTERVENOR'S  
EXHIBIT No. 4

[Title of District Court and Cause.]

AFFIDAVIT OF LUTHER C. HESS

State of Arkansas,  
County of Garland—ss.

I, the undersigned, Luther C. Hess, being first duly sworn, depose and say that I am the plaintiff named in the above-entitled cause and that I am a resident and inhabitant of the Territory of Alaska, Fourth Judicial Division, residing at Fairbanks,

and I have been a resident and inhabitant thereof for more than 25 years.

That I signed and swore to the complaint in the above-entitled cause and that all of the allegations contained therein are true, and they are re-alleged in this affidavit as though fully set forth herein.

That I have real and personal property in the Territory of Alaska in three different taxing units, as those are described in the Alaska Property Tax Act, Chapter 10, Session Laws of Alaska, 1949; and that some of this property is in the City of Fairbanks, a municipal corporation, some outside the City of Fairbanks in the Fairbanks School District, and some in the Fourth Judicial Division, Territory of Alaska, outside of any incorporated municipality, school district, or public utility district.

That certain taxes were levied on my property within the City of Fairbanks and the Fairbanks School District which have been paid, and the Commissioner of Taxation for the Territory of Alaska, one of the defendants hereinabove named, is about to demand the payment of a tax on my property described in the [79] complaint, which is situated in the territory outside of the City of Fairbanks and the Fairbanks School District; that the valuation placed upon this property is \$58,213.46. Defendant M. P. Mullaney, as Commissioner of Taxation of Alaska, is preparing to collect a tax thereon of \$580.13.

That no assessment roll has been made for the Territory of Alaska, Fourth Judicial Division, as provided by the Alaska Property Tax Act, but payment of the tax is required notwithstanding that

fact; that I have had no opportunity to appear before any board of equalization and for the reason that no property tax roll or assessment roll has been made as provided by law. I have had no opportunity to compare or equalize the assessment or valuation of my property with that of others who are similarly situated for the reason that there is no provision in the Alaska Property Tax Act for a Territorial Board of Equalization.

That if the tax on my property which is required under the act is not paid by February 1, 1950, my property will be subjected to foreclosure of a tax lien thereon and to sale without any provision for redemption.

That the tax levied by the Alaska Property Tax Act is void for the reasons set forth in the complaint, and I have no remedy at law, no remedy and no protection against the payment of this tax and no method for the removal of the cloud on the title of my property except through injunction of the above-entitled court.

Wherefore, affiant prays that pending the final trial of this cause on its merits, a preliminary injunction issue as prayed for in the complaint.

/s/ LUTHER C. HESS. [80]

Subscribed and sworn to before me this 6th day of January, 1950.

[Seal] /s/ T. M. DEERE,

Notary Public in and for the State of Arkansas,  
County of Garland.

My commission expires Feb. 1, 1951. [81]

PLAINTIFF'S AND INTERVENOR'S  
EXHIBIT No. 10

[Title of District Court and Cause.]

## AFFIDAVIT OF E. A. TONSETH

United States of America,  
Territory of Alaska—ss.

I, E. A. Tonseth, being first duly sworn, depose and say: That I am the City Clerk of the City of Fairbanks, Alaska, an incorporated city or municipality of the first class, and that I have custody of the city tax rolls and the records of the City of Fairbanks and of the school budget of the Fairbanks School District, which is an independent school district, comprising the City of Fairbanks, a municipal corporation, and adjacent territory.

That the total assessed value of real and personal property within the City of Fairbanks for the year 1949 upon which municipal taxes are levied was \$16,060,624.00.

That the total school budget of the Fairbanks School District for the school year 1949-1950 is \$210,575.50; that is the amount payable by the Fairbanks School District, which includes the City of Fairbanks, and of that amount \$126,000.00 is the share of the City of Fairbanks and \$84,575.50 is the share payable by the property in the Fair-



banks School District outside the City of Fairbanks, Alaska.

/s/ E. A. TONSETH.

Subscribed and sworn to before me this 12th day of May, 1950.

[Seal] /s/ MYRTLE L. BOWERS,  
Notary Public in and for the Territory of Alaska.

My commission expires June 10, 1950. [82]

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PLAINTIFF'S AND INTERVENOR'S  
EXHIBIT No. 13

[Title of District Court and Cause.]

AFFIDAVIT OF ROY P. MATHIAS

United States of America,  
Territory of Alaska—ss.

I, the undersigned, Roy P. Mathias, being first duly sworn, depose and say: That I am the tax collector for the Fairbanks School District, and have access to the records thereof and to the records of assessment of all property within the Fairbanks School District outside the incorporated City of Fairbanks, Alaska. That the assessment rolls to date show the total assessed value of real and personal property within the Fairbanks School District, outside the City of Fairbanks, Alaska, to be at this time \$13,532,279.00 for the year 1949. That this amount is the approximate total although the

assessment rolls have not been fully completed and there will be some additions and slight adjustments to be made in the assessment rolls.

/s/ ROY P. MATHIAS.

Subscribed and sworn to before me this 12th day of May, 1950.

[Seal] /s/ MYRTLE L. BOWERS,

Notary Public in and for the Territory of Alaska.

My commission expires June 10, 1950. [83]

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DEFENDANT'S EXHIBIT No. 1-A

[Title of District Court and Cause.]

DEPOSITION OF JAMES C. RYAN, A WIT-  
NESS ON BEHALF OF DEFENDANT, M.  
P. MULLANEY

Be It Remembered, that the deposition of James C. Ryan, a witness called on behalf of defendant, was taken on the 6th day of April, 1950, beginning at 2:00 p.m., at Room 411-B, Federal Building, Juneau, Alaska, pursuant to stipulation to take deposition as hereto annexed, before Martha Wendling, a Notary Public. Norman C. Banfield, of Faulkner, Banfield and Boochever, of Juneau, Alaska, appeared on behalf of plaintiff and intervenors; J. Gerald Williams, Attorney General of Alaska, and John H. Dimond, Assistant Attorney General, appeared on behalf of defendant, M. P. Mullaney;

Whereupon, the witness, being by the Notary

first duly sworn, was examined and testified as follows:

JAMES C. RYAN

a witness called on behalf of defendant, M. P. Mullaney:

Direct Examination

By Mr. Dimond:

Q. Will you please state your name?

A. James C. Ryan.

Q. What is your profession?

A. Commissioner of Education for the Territory of Alaska.

Q. How long have you been so engaged as Commissioner?

A. About 9½ years; nine and some months.

Q. Briefly what are your duties as Commissioner of Education?

A. The duties are to keep all records pertaining to the schools of Alaska; to disburse monies appropriated by the Territory [84] for the use of public schools; to do all things necessary to encourage building, and operate public schools and to directly operate the rural schools of the Territory.

Q. Will you please give a general description of the school system of the Territory?

A. The over-all school system of Alaska is operated by a board known as the Territorial Board, which is appointed by the Governor and confirmed by the Legislature. There are five members, one from each judicial division and one at large. The

schools are in two general classes, rural schools that are operated 100% by the Territory and incorporated school districts that are operated jointly by the Territory and the local people of the district. There are three different types of incorporated school districts in Alaska. One type is what we call the city type where the school district is just as large as the boundaries of the city. The second type is the independent school district which embraces the municipality and its adjacent area not to exceed 500 square miles. The third type is the incorporated school district where a settlement or a village and its adjacent area may incorporate as a school district, but it does not include a municipality.

Q. Are these three types of school districts commonly called incorporated?

A. Yes, they are commonly called incorporated school districts.

Q. And they include a type of school district called an incorporated school district?

A. Yes. It is a little confusing in that respect because one of them is called an incorporated school district which is a [85] specific type, yet they are all organized school districts or incorporated school districts.

Q. I hand you these books, Dr. Ryan. Will you please state what they are?

A. These are the reports of the Commissioner of Education for the biennium ending June 30, 1936, 1938, 1940, 1942, 1944, 1946, 1948.

Q. Are these reports required to be kept by law?

A. Yes, it is required by law that the Commis-

sioner of Education report once each biennium.

Q. What, briefly, do those reports contain?

A. They contain the activities of the Territorial Department of Education and of the Territorial Board of Education and something of the statistics of the public school system concerning enrollments and the expenditures of the Territory for various school purposes.

Q. I now hand you this paper. Will you please state what this is?

A. This is a distribution of expenses for the years 1934 through 1948—just what it says on the front here—the number of incorporated school districts and the unincorporated schools, with a total expense for each of these two types, and the portion of the total expense paid from territorial funds, the portion paid from funds raised by local taxes within the district, and the enrollment of pupils in each of the two types of schools.

Q. Did you prepare this?           A. Yes.

Q. From what source did you obtain these figures? [86]

A. The source of this material was from information on file in my office. The official records chiefly are compiled in these reports.

Q. Reports of the Commissioner of Education which you have just previously identified?

A. Yes.

Q. This is a summary of certain statistics taken from those reports?           A. That is right, sir.

Q. I observe that you have unincorporated

schools, rural schools and special schools; can you tell me what a special school is?

A. Yes. The Territorial Board of Education has, by regulation, determined the manner in which certain rural schools shall be established. Schools that are very small, where they have just a minimum number for the establishment of a school—for a number of years that was six—we establish what is known as a special school. The distinguishing feature there was that the local community would provide certain things in the operation of the school, whereas in a larger rural school all of it was provided by the Territory. For example, if a community had just six pupils, we would establish a school if the local community would provide the fuel, the light and the janitor service, while the Territory then provided the teacher and the textbooks and all the other expenses of the operation. For quite a number of years that was carried on our books and in our records as special schools, but I believe somewhere about 1943 or 1944 we discontinued that practice and you will note from the [87] biennial report it no longer appears; it just appears as territorial schools.

Q. What proportion of the total expense for the support of rural and special schools is paid by the people in the special school districts by way of fuel, light and janitor service? Is it a large amount?

A. No, it is a very small amount. To give you an example, in a little school of six or seven pupils the community would provide the fuel, which would amount to about ten cords of wood, and that

running about as it would at that time—about \$10—it varies in amount—it would be maybe \$150. Many times the men of the community actually cut the wood and brought it in so it would not amount to too much.

Q. The other expenses of the special schools are borne by the Territory?

A. That is right; all the other expenses—text-books, supplies, teachers' salaries, etc.

Q. Would counsel be willing to stipulate that this last exhibit identified by the witness can be offered in evidence at the trial of this case without the necessity of any further identification?

Mr. Banfield: Yes, it may be offered without any further identification, but at that time we reserve the right to object to its admissibility on other grounds.

Mr. Dimond: Very well. I would like to have the Notary mark this exhibit "Defendant's Exhibit No. I" and attach it to the deposition to be sent to the Clerk of the Court at Fairbanks. [88]

(The Notary then proceeded to mark the exhibit according to the instructions of counsel.)

Mr. Dimond: Would you also be willing to stipulate that the reports of the Commissioner of Education previously identified by the witness could, if desired by either party, be offered in evidence, in whole or in part, without the necessity of further identification, subject, of course,—

Mr. Banfield: Yes, I will so stipulate, subject, of course, to other objections as to their admissibility.

Mr. Dimond: I would like to have the Notary mark each one of those reports of the Commissioner of Education "Defendant's Exhibit No. II." I believe there are seven of the books, and to distinguish between them, each one should be marked "Part 1," "Part 2," "Part 3" through 7, and each should contain the words "Defendants Exhibit No. II."

(The Notary then proceeded to mark the exhibits according to the instructions of counsel.)

Q. What are the items of expense of incorporated school districts which are not borne by territorial funds—not paid from territorial funds?

A. Chiefly capital expenditures, although it does not follow always that the usual interpretation of capital expenditures is the same as that used in ordinary common usage. The local district is responsible 100% for construction of the [89] building, the repair of the building; they are responsible 100% for equipment in the building. It is there that the difference in the Territorial Board's interpretation and that of common practice breaks down. In general practice, a typewriter that is a replacement is usually regarded as a current expense, while a new typewriter, a brand new one added, is a capital expenditure. Any typewriter where it is a replacement or any school desk where it is a replacement is an expense of the local school district and is counted as an expenditure by the school board. In addition to that, the local district bears a portion of the cost of the operation of the school, depending upon the size of the school. Territorial



law provides that schools with 150 or fewer pupils get 85% of their current operation cost borne by the Territory and 15% must be borne by the local community. If the school has an enrollment of 150 to 300, the local community bears 20% and the Territory 80%. If the enrollment is over 300, the local community bears 25% of the current operation cost and the Territory 75%.

Q. Dr. Ryan, in the case of a school which would receive 80% support from the territorial government by way of refund, why is it that under this exhibit the percentage is shown as approximately 66%?

A. There is a very good reason for that. The Territory pays 80% of teachers' salaries, for example, based upon the territorial minimum salary scale, while the local community bears their 20% of that minimum scale plus 100% of all of the amount which they pay above the minimum scale, and most of the districts do pay above the minimum scale, and that [90] accounts for that difference. The Territory does pay 80% of the minimum scale, but for the over-all expenditure of teachers' salaries it would not be 80% because the local community pays above the minimum scale.

Q. With regard to pupils attending schools within incorporated school districts but residing outside of the district, who pays the cost of their tuition?

A. The Territory.

Q. The Territory pays it to the school district?

A. Pays it to the school district.

Q. How is the cost of transportation of pupils to schools paid?

A. By the Territory 100%.

Q. Even pupils attending school district schools?

A. Yes.

Q. I am not sure whether I asked you this, but going back to rural schools, are the capital expenditures of those schools paid by the Territory of Alaska?

A. Yes. The expense of the operation of rural schools is borne 100%. The current expense, the capital expenditure, everything is borne by the Territory—those outside of any incorporated school district—there I am using incorporated school district in its broad sense.

Mr. Dimond: No further questions.

Mr. Banfield: No questions by the plaintiff or intervenor.

(Witness excused.)

Signature of Witness:

/s/ JAMES C. RYAN. [91]

### Certificate

United States of America,  
Territory of Alaska—ss.

I, Martha Wendling, Notary Public in and for the Territory of Alaska, residing at Juneau, Alaska, do hereby certify:

That the annexed and foregoing deposition of James C. Ryan, a witness called on behalf of the defendant, M. P. Mullaney, was taken before me on the 6th day of April, 1950, beginning at 2:00 p.m., at Room 411-B, Federal Building, Juneau, Alaska, pursuant to stipulation to take deposition as heretofore annexed;

That the above-named witness, before examination, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That this deposition, as heretofore annexed, is a full, true, and correct transcription of all of the testimony of said witness, including questions and answers and objections of counsel;

That in compliance with the request of counsel for defendant, I marked Defendant's Exhibits I and II in the manner directed by counsel, and have attached said exhibits to this deposition;

That this deposition has been retained by me for the purpose of sealing up and directing the same to the Clerk of the Court, Fairbanks, Alaska, as required by law.

In Witness Whereof, I have hereunto set my hand and affixed my seal this 7th day of April, 1950.

[Seal]      /s/ MARTHA WENDLING,  
Notary Public for Alaska.

My Commission expires November 1, 1950. [92]

Defendant's Exhibit I

Showing, for the years 1934 through 1948, the number of Incorporated School Districts and Unincorporated Schools in Alaska; the total expenses for each of these two types of schools; the portion of the total expenses which is paid from Territorial funds; the portion which is paid from funds raised by local taxes within the districts; and the enrollment of pupils in each of the two types of schools.

## School Years

	1934-1935	1935-1936	1936-1937	1937-1938	1938-1939	1939-1940	1940-1941
I. Incorporated School Districts (Consisting of City Schools, Incorporated School Districts, and Independent School Districts.)							
1. Number .....	17	17	17	17	18	18	18
2. Total Expenses (exclusive of capital outlay) .....	\$393,008	\$414,404	\$436,955	\$452,054	\$477,387	\$543,880	\$573,032
a. Amount paid from Territorial funds .....	274,184	293,609	308,598	299,227	321,477	351,512	371,953
b. Amount paid from funds raised by local taxes in districts .....	118,824	120,795	128,357	152,827	155,910	192,368	201,079
c. Percentage paid from funds raised by local taxes in districts .....	30.2	29.2	29.4	33.8	32.7	35.4	35.4
3. Enrollment (average daily attendance) .....	3,332	3,398	3,524	3,533	3,764	3,923	4,052
II. Unincorporated Schools (Consisting of Rural or Village Schools and Special Schools.)							
1. Number .....	74	76	72	68	64	53	55
2. Total Expenses (exclusive of capital outlay) .....	\$190,502	\$228,393	\$249,598	\$252,050	\$251,068	\$244,564	\$211,627
a. Amount paid from Territorial funds .....	190,502	228,393	249,598	252,050	251,068	244,564	211,627
b. Amount paid from funds raised by local taxes .....	none	none	none	none	none	none	none
c. Percentage paid from funds raised by local taxes .....	none	none	none	none	none	none	none
3. Enrollment (average daily attendance) .....	1,441	1,687	1,765	1,702	1,744	1,335	1,424

	School Years							
	18	17	18	18	21	22	23	
	1941-1942	1942-1943	1943-1944	1944-1945	1945-1946	1946-1947	1947-1948	
I. Incorporated School Districts (Consisting of City Schools, Incorporated School Districts, and Independent School Districts.)								
1. Number .....	18	17	18	18	21	22	23	
2. Total Expenses (exclusive of capital outlay) .....	\$620,578	\$635,108	\$756,851	\$828,925	\$982,301	\$1,230,430	\$1,718,254	
a. Amount paid from Territorial funds .....	392,020	391,125	508,113	537,097	619,347	868,496	1,182,767	
b. Amount paid from funds raised by local taxes in districts .....	228,558	243,983	248,738	291,828	362,954	361,934	535,487	
c. Percentage paid from funds raised by local taxes in districts .....	36.8	38.4	32.9	35.2	37.0	29.4	31.1	
3. Enrollment (average daily attendance) .....	4,202	3,615	4,069	4,473	5,100	5,785	6,557	
II. Unincorporated Schools (Consisting of Rural or Village Schools and Special Schools.)								
1. Number .....	55	46	44	38	45	50	55	
2. Total Expenses (exclusive of capital outlay) .....	\$192,249	\$218,325	\$249,087	\$271,861	\$289,931	\$357,885	\$479,840	
a. Amount paid from Territorial funds .....	192,249	218,325	249,087	271,861	289,931	357,885	479,840	
b. Amount paid from funds raised by local taxes .....	none	none	none	none	none	none	none	
c. Percentage paid from funds raised by local taxes .....	none	none	none	none	none	none	none	
3. Enrollment (average daily attendance) .....	1,236	982	1,043	1,140	1,181	1,343	1,822	

## Summary — 1934-1948

	Incorporated School Districts	Unincorporated Schools
1. Average number per school year.....	18	56
2. Enrollment—avg. daily attendance..	4,327	1,423
3. Total expenses (exclusive of capital outlay) .....	\$10,063,167	\$3,686,980
4. Amount of total expenses paid from Territorial funds .....	6,719,525	3,686,980
5. Amount of total expenses paid from funds raised by local taxes in districts .....	3,343,642	none
6. Percentage of total expenses paid from funds raised by the local taxes in districts .....	33.2%	none

[Endorsed]: Filed August 14, 1950.

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[Title of District Court and Cause.]

STATEMENT OF POINTS TO BE  
RELIED ON BY APPELLANT

Appellant, M. P. Mullaney, proposes on his appeal to the United States Court of Appeals for the Ninth Circuit, to rely upon the following points as error:

I.

The Court erred in holding that the tax levied by Chapter 10, Session Laws of Alaska, 1949, is invalid as not being valued and uniform as required by Section 9 of the Organic Act of the Territory of Alaska. This holding was error because the classification between (1) property within incorporated towns and cities, incorporated school districts, and independent school districts, and (2) property in territory outside of such municipalities and districts, adopted by the Territorial Legislature in Chapter 10, Session Laws of Alaska, 1949, is based upon grounds having a rational relation to a legitimate end of governmental action and a permissible policy of taxation, and, therefore, satisfies standards of equality demanded by the Equal Protection Clause of the 14th Amendment to the Constitution of the United States, such standards being the same as those demanded by the Uniformity Clause of Section 9 of the Organic Act of Alaska.

II.

The Court erred in holding that the tax levied under Chapter 10, Session Laws of Alaska, 1949, is invalid as being a taking of property without due

process of law, forbidden by the 5th Amendment to the Constitution of the United States. This holding was error, for if the legislative scheme of classification in said Chapter 10 satisfies standards of equal protection demanded by the 14th Amendment to the Constitution of the United States, there necessarily is no deprivation of property without due process of law. [142]

### III.

The Court erred in holding that the tax levied by Chapter 10, Session Laws of Alaska, 1949, upon unimproved, unpatented mining claims which are not producing and upon unimproved non-producing patented mining claims upon which the improvements originally required for patent have become useless through deterioration, removal or otherwise, is contrary to Section 9 of the Organic Act of Alaska, as amended by the Act of Congress of June 3, 1948, and is, therefore, invalid as not valuing such claims according to their true and full value, nor at the price paid the United States therefor, nor at a flat rate fixed by the Legislature. This holding was error, for if Congress with its plenary power to legislate for the Territory of Alaska has the right to provide in Section 9 of the Organic Act that taxes shall be assessed according to full and true value, it necessarily has the power and authority to modify this portion of Section 9 by providing that taxes on such mining claims need not be assessed according to full and true value, but may be assessed at either the price paid the United States therefor or at a



flat rate fixed by the Legislature. The Territorial Legislature in Chapter 10, Session Laws of Alaska, 1949, chose the latter alternative granted by Congress by valuing such mining claims at a flat rate of \$500.00 per each 20 acres or fraction of each such claim.

#### IV.

The Court erred in holding that the last sentence in Section 11 of Chapter 10, Session Laws of Alaska, 1949, which provides "the true value of property shall be that value at which the property would generally be taken in payment of a just debt from a solvent debtor" is invalid as being contrary to [143] the provisions of Section 9 of the Organic Act of Alaska. This holding was error since the provision of Section 9 of the Organic Act of Alaska that "the assessment shall be according to the true and full value" has for its purpose equality of burden in taxation, and such objective is not thwarted when the Legislature specifies what facts and circumstances are to be considered in determining the assessable value of property for purposes of taxation as long as the same method is applied to all within a classification that is legitimate.

#### V.

The Court erred in holding that appellees have no adequate remedy at law, and that the enforcement of Chapter 10, Session Laws of Alaska, 1949, would have resulted in irreparable injury to appellees, and that the bringing of this action prevented a multiplicity of actions.

## VI.

The Court erred in holding that the liens impressed by the tax levied under Chapter 10, Session Laws of Alaska, 1949, upon the properties of appellees situated in the Territory outside of municipalities, independent and incorporated school districts, and public utility districts, constitute a cloud on the titles of appellees to such properties which they are legally entitled to have removed in a court of equity. This holding was error since appellees, under the provisions of §48-7-1, Alaska Compiled Laws Annotated, 1949, have an adequate remedy at law.

## VII.

The Court erred in making and entering its Conclusion of Law No. VII, which reads as follows: "That the temporary injunction heretofore issued in this cause restraining the [144] defendant M. P. Mullaney, Commissioner of Taxation, and his agents, deputies, official representatives, and all persons acting under him, from enforcing the provisions of Chapter 10, Session Laws of Alaska, 1949, against the property (other than boats and vessels) of plaintiff and intervenor herein, should be made permanent and the bonds given pursuant to the requirements of the preliminary injunction exonerated and the sureties thereon discharged."

## VIII.

The Court erred in entering Judgment and Decree in favor of appellees and permanently enjoining appellant from collecting or attempting to collect

from appellees the tax imposed by Chapter 10, Session Laws of Alaska, 1949, upon property owned by them in the Territory of Alaska outside of municipalities and independent and incorporated school districts.

Dated at Juneau, Alaska, this 10th day of August, 1950.

J. GERALD WILLIAMS,  
Attorney General of Alaska,

By JOHN H. DIMOND,  
Assistant Attorney General, Attorneys for Defendant-Appellant, M. P. Mullaney.

Receipt of copy acknowledged.

[Endorsed]: Filed August 14, 1950. [145]

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[Title of District Court and Cause.]

DESIGNATION OF PORTIONS OF RECORD  
AND PROCEEDINGS TO BE INCLUDED  
IN THE RECORD ON APPEAL

To the Clerk of the Above-Entitled Court:

You are hereby requested to make a transcript of record to be filed in the United States Court of Appeals for the Ninth Circuit, pursuant to an appeal taken in the above-entitled cause, and to include in such transcript of record the following papers and records which appellant, M. P. Mullaney, herewith

designates as those portions of the record and proceedings herein which he deems should be contained in the record on appeal of this cause:

1. Plaintiff's complaint for injunction and other relief.
2. Complaint in intervention.
3. Order permitting intervention.
4. Amended answer of defendant, M. P. Mullaney, to plaintiff's complaint.
5. Amended answer of defendant, M. P. Mullaney, to complaint in intervention.
6. Preliminary injunction.
  - 6-a. Stipulation re Introduction of Evidence at trial, 2/6/50.
7. Stipulation re summary of evidence, with summaries of plaintiff's and intervenor's exhibits Nos. 5, 6, 7, 8, 9, 11, 12 and 14 attached.
8. Stipulation re reporter's transcript of record, with intervenor's exhibit No. 1, plaintiff's and intervenor's exhibits Nos. 4, 10 and 13, and defendant's exhibits Nos. 1A and I attached.
9. Affidavit of January 24, 1950, of M. P. Mullaney.
10. Reporter's transcript of record.
11. Opinion of court.
12. Findings of fact and conclusions of law.
13. Amended judgment and decree.

14. Notice of appeal. [146]
15. Statement of points relied on by appellant.
16. This designation of portions of record and proceedings to be included in the record on appeal.
17. Stipulation re Printing of record.

Dated at Juneau, Alaska, this 10th day of August, 1950.

J. GERALD WILLIAMS,  
Attorney General of Alaska.

By /s/ JOHN H. DIMOND,  
Assistant Attorney General, Attorneys for Defendant-Appellant, M. P. Mullaney.

Receipt of copy acknowledged.

[Endorsed]: Filed August 14, 1950. [147]

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[Title of District Court and Cause.]

### STIPULATION RE PRINTING OF RECORD

It is hereby stipulated and agreed by and between Faulkner, Banfield and Boochever, attorneys for plaintiff and intervenor above named, and John H. Dimond, Assistant Attorney General, attorney for defendant, M. P. Mullaney, that in printing the papers and records to be used in the hearing on appeal in the above-entitled cause before the United States Court of Appeals for the Ninth Circuit, the title of

the court and cause in full shall be omitted from all papers except on the first page of the record, and that there shall be inserted in place of the title on all papers used as part of the record the words "Title of District Court and Cause"; also that all endorsements on all papers used as a part of the record may be omitted except the clerk's filing marks and admissions of service.

Dated at Juneau, Alaska, this 10th day of August, 1950.

MEDLEY AND HAUGLAND,  
FAULKNER, BANFIELD &  
BOOCHEVER,

By /s/ H. L. FAULKNER,

/s/ CHARLES J. CLASBY,

Attorneys for Plaintiff and  
Intervenor.

/s/ JOHN H. DIMOND,

Of Attorneys for Defendant,  
M. P. Mullaney.

[Endorsed]: Filed August 14, 1950. [148]

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[Title of District Court and Cause.]

### TRANSCRIPT OF RECORD

Be it remembered that upon this 15th day of May, 1950, the above-entitled cause came on regularly before the Honorable Harry E. Pratt, District Judge,

for trial upon plaintiff's complaint, as amended by interlineation; the answer of defendants, Fairbanks School District and the Officers thereof; the answer of the defendant, City of Fairbanks; the answer of the defendant M. P. Mullaney; the complaint in intervention; and the answers of the above-mentioned defendants thereto.

The plaintiff appeared by H. L. Faulkner, Medley & Haugland, and Charles J. Clasby of Collins & Clasby; the intervenor appeared by Faulkner, Banfield & Boochever; the defendants M. P. Mullaney and William Liese appeared by J. Gerald Williams, Attorney General of Alaska, and J. H. Dimond, Assistant Attorney General of Alaska; the defendant, City of Fairbanks, appeared by Mike Stepovich; and the defendants Fairbanks School District and officers, appeared by Maurice T. Johnson.

The Following Proceedings Were Had:

Mr. Faulkner: If the Court please, before we begin this [100] morning I would like to ask leave to make a slight amendment to the complaint in intervention on page three where we list the property of the Alaska Juneau Gold Mining Company, and insert at the end of the description of the property, "boats and water craft, \$291.00." At the time we listed the property that was omitted for some reason. I understand Mr. Dimond has no objection to that.

The following documents and affidavits are offered in evidence: Certificate of Compliance of Intervenor, certified by Clerk of District Court, Division 1; Certificate of Compliance of Intervenor certified

by Auditor of Alaska; Affidavit of January 6, 1950, of Luther C. Hess; Affidavit of January 9, 1950, of C. L. Popejoy to which is attached a copy of the tax ordinance of the City of Juneau and excerpts from minutes of meeting of October 21, 1949, of the Common Council of the City of Juneau; Affidavit of January 9, 1950, of Mrs. Daniel D. Livie to which are attached the tax ordinance of the Juneau Independent School District and extracts of minutes of special meeting of August 19, 1949, of the Board of Directors of the Juneau Independent School District; Affidavit of May 4, 1950, of Mrs. Daniel D. Livie; Affidavit of January 9, 1950, of Celia A. Wellington to which are attached the tax ordinance of the Douglas Independent School District and extract from minutes of meeting of October 5, 1949, of the Board of Directors of the Douglas Independent School District; Affidavit of January 9, 1950, of A. J. Balog to which are attached the tax ordinance of the City of Douglas and minutes of meeting of September 12, 1949, of the Common Council of the City of Douglas.

Judge Pratt: The offers are admitted.

Mr. Faulkner: The deposition of J. A. Williams—we haven't introduced that as yet. Does the Court want that read at [101] this time?

Judge Pratt: Can you state the substance of it?

Mr. Faulkner: Yes. (reads). (Continuing offers) Affidavit of January 17, 1950, of E. A. Tonseth to which is attached the tax ordinance of the City of Fairbanks; Resolutions of the Common Council of the City of Fairbanks of September 26, 1949, and October 10, 1949; Affidavit of January 17, 1950, of



Frank Conway to which are attached three resolutions of the Fairbanks Independent School District; and the following affidavits were filed this morning, filed by stipulation: Affidavit of May 12, 1950, of E. A. Tonseth, Clerk of the City of Fairbanks; Affidavit of May 12, 1950, of Roy P. Mathias, Tax Collector of Fairbanks School District. I think those are all of the documents. When Attorney General Williams comes to his case I think he has an affidavit too. Now, I would like to call for one question, Mr. Hess, the plaintiff. The only reason for calling Mr. Hess is the assessment and since then that has been changed by increasing it ten thousand dollars, and I would like to have that in the record.

### LUTHER C. HESS

plaintiff, being first duly sworn, testified as follows:

By Mr. Faulkner:

Q. Mr. Hess, in your complaint you alleged that you had certain property outside of the City of Fairbanks upon which the value had been placed at \$58,213.46, and that a tax was levied on that—\$580.13. Now, has that been changed since this complaint was filed:

A. Those figures were on the value that I placed as I interpreted the law and the values have been changed by the assessor. I don't remember the exact sum just now but about ten thousand dollars more.

Q. About \$10,000.00, and that would increase the tax about [102] \$100.00?           A. Yes, sir.

Q. I think that is all. I would like to call Mr. William Liese, the Tax Assessor, for one question.

## WILLIAM K. LIESE

being first duly sworn, testified as follows :

By Mr. Faulkner :

Q. Mr. Liese, will you please state your name?

A. William K. Liese.

Q. Your position?

A. I am the Tax Assessor for the Fourth Division.

Q. As Assessor for the Fourth Division, have you brought with you the total value of taxable property, real and personal, in the Fourth Division, outside of Municipal and School Districts?

A. I have the total value of the property that is assessed but the figure is not complete, that is, on the property to be assessed.

Q. What is the value today?

A. The property that has been assessed, covering the total property to date, real and personal, is \$11,380,798.30.

Q. Mr. Liese, how many municipal and school districts are there in the Fourth Division?

A. There are three municipalities and one independent school district.

Q. The independent school district, is the one that comprises the City of Fairbanks?

A. I think that is right.

Mr. Faulkner: If the Court please, Mr. Clasby has called my attention to the fact we want to be careful about the deposition of Mr. Williams—to be sure it is read. [103]

Attorney General Williams: Does it have a number?

(The Stipulation to take the Deposition of J. A. Williams, and the attached deposition with attached exhibits, were received in evidence and marked by the Clerk of the Court as Intervenor's Exhibit No. 1.)

Mr. Faulkner: It is numbered as an exhibit. I just want to record it as having been read.

Judge Pratt: We can show that it is introduced as an exhibit.

Mr. Faulkner: I believe that is all the evidence we have. We have all the evidence before the Court that we wish considered.

Attorney General Williams: Your Honor, for my knowledge is it before the Court now that the tax has been changed from ten mills to seven mills?

Judge Pratt: You want to change that back to ten?

Attorney General Williams: It should be changed back to ten, that is right.

Mr. Faulkner: On page four, paragraph five, we struck out ten and put in seven.

Judge Pratt (To Clerk of the Court): Strike out the seven and put back the ten.

Mr. Dimond: If the Court please, we have no opening statement to make. Our evidence consists only of the deposition of James C. Ryan of Juneau.

Judge Pratt: Stipulation as given may be so considered.

Mr. Dimond: Did that apply also to the two exhibits?

Judge Pratt: Oh, yes, didn't you want that marked as an exhibit?

Mr. Dimond: Yes, I believe the deposition should also be marked as an exhibit. [104]

(The Stipulation to take the Deposition of James C. Ryan, and the attached deposition with attached exhibits, were received in evidence and marked by the Clerk of the Court as Defendant's Exhibit No. 1-A.)

Mr. Dimond: That is all we have, your Honor.

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### CERTIFICATE OF REPORTER

United States of America,  
Territory of Alaska—ss.

I, Lois Farris, the official Court Reporter for the District Court, District of Alaska, Fourth Division, during the period of the trial of the above-entitled cause do hereby certify as follows, to wit: that I attended the trial of the above-entitled cause on May 15, 1950, at Fairbanks, Alaska, and took down in shorthand all of the oral proceeding and oral testimony given thereat; that the above and foregoing pages one to six, inclusive, constitute a full, true and correct transcript of my said shorthand record of said oral testimony and oral proceedings at said trial; that written stipulations and affidavits, notices, depositions, pleadings or any other writing made a part of the proceedings by such stipulations of the parties

or attorneys filed herein are not included in said preceding six pages of this transcript.

Done at Fairbanks, Alaska, this 22nd day of July, 1950.

/s/ LOIS FARRIS,  
Official Court Reporter  
For the Aforesaid Court.

[Endorsed]: Filed August 21, 1950. [106]

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[Title of District Court and Cause.]

#### CERTIFICATE OF CLERK

I, John B. Hall, Clerk of the above-entitled Court, do hereby certify that the following list comprises all Pleadings, Motions, and Orders as per designation of Record filed by Appellant in the above-entitled cause, viz.:

Complaint for Injunction and Other Relief; Complaint in Intervention; Order Permitting Intervention; Amended Answer of Defendant M. P. Mullaney to Plaintiff's Complaint; Amended Answer of Defendant M. P. Mullaney to Complaint in Intervention; Preliminary Injunction; Stipulation Re Introduction of Evidence at Trial; Stipulation Re Summary of Evidence; Stipulation Re Reporter's Transcript of Evidence; Affidavit of Defendant M. P. Mullaney, Commissioner of Taxation; Transcript of Record and Certificate of Court Reporter; Opinion; Findings of Fact and Conclusions of Law; Amended Judgment and Decree; Notice of Appeal; Statement

of Points to Be Relied on by Appellant; Designation of Portions of Record and Proceedings to Be Included in the Record on Appeal; Stipulation Re Printing of Record.

Witness my hand and the seal of the above-entitled Court this 5th day of September, 1950.

[Seal]     /s/ JOHN B. HALL,  
Clerk of the District Court, Fourth Judicial Division,  
Territory of Alaska.

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[Endorsed]: No. 12675. United States Court of Appeals for the Ninth Circuit. M. P. Mullaney, Commissioner of Taxation, Territory of Alaska, Appellant, vs. Luther C. Hess and Alaska Juneau Gold Mining Company, a corporation, Appellees. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Fourth Division.

Filed September 7, 1950.

       /s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit  
No. 12675

M. P. MULLANEY, Commissioner of Taxation,  
Territory of Alaska,

Appellant,

vs.

LUTHER C. HESS and ALASKA JUNEAU  
GOLD MINING CO., a Corporation,  
Appellees.

APPELLANT'S STATEMENT OF POINTS  
AND DESIGNATION OF PARTS OF REC-  
ORD TO BE PRINTED

Comes now appellant above named and adopts the Statement of Points to be Relied on by Appellant, filed with the clerk of the district court, as his statement of points to be relied upon in the United States Court of Appeals, and prays that the whole of the record as filed and certified be printed.

Dated at Juneau, Alaska, this 10th day of August, 1950.

J. GERALD WILLIAMS,  
Attorney General of Alaska.

By /s/ JOHN H. DIMOND,  
Assistant Attorney General,  
Attorneys for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed September 7, 1950.

